THE EFFECTS OF THE HEALTH LAW'S DEFINITIONS OF FULL-TIME EMPLOYEE ON SMALL BUSINESSES

HEARING

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WEDNESDAY, OCTOBER 9, 2013

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON HEALTH AND TECHNOLOGY,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:00 p.m. in Room 2360, Rayburn House Office Building, Hon. Chris Collins [chairman of the Subcommittee] presiding.

Present: Representatives Collins, Coffman, Luetkemeyer, Hahn, Schrader, and Schneider.

Also Present: Representatives Mulvaney, Tipton, Rice, Hanna, and Velázquez.

Chairman COLLINS. The hearing will come to order. I want to thank the witnesses for appearing today for our latest hearing on the potential negative consequences of the health care law on small business. It has been a little over 1 full week since individuals and small business could begin to enroll in the public exchanges created by the President's health care law, and the outcomes thus far, predictably, have not been encouraging. The President promised his health care law would reduce health costs and provide affordable coverage to individuals and small business.

Instead, a number of small businesses have told us that health care law is increasing the cost of health care significantly, in some cases well over 50 percent. However, while outcomes such as this were predicted, time and again by me and many others, they are not the subject of today's hearing.

What we are here today to discuss are some of the other unwanted outcomes of this health care law, namely, what effect it has on employment opportunities at small business.

As the Committee has examined in the past, the health law's employer mandate that businesses with 50 or more employees offer health insurance to their employees or pay a penalty is a disincentive for businesses to grow and add new jobs.

This outcome is made worse by the health law's seemingly arbitrary definition of full-time employee as someone who works 30 hours or more per week. While most Americans and other Federal statutes define a full-time employee as one who works an average of 40 hours per week, the health care law creates its own definition of 30 hours or more per week. The consequences of this 30-hour per

week definition are all too predictable: fewer hours for employees and administrative nightmares for small business.

According to a recent survey of small business owners and executives, nearly 75 percent intend to take some type of action to avoid the health law's employer mandate including moving more full-time employees to part-time status and reducing hours of current part-time employees to less than 30.

In short, while most of the American public continues to place job creation as their number one policy concern, the health care law creates the perverse incentive for employers to not only refrain from hiring new workers, but also to reduce the hours of current employees.

The witnesses at today's hearing will explain the challenges the health law's definition of full-time employee creates and how it will affect the way they manage their business and provide for their workers.

I would like to now yield to Ranking Member Hahn for her opening statement.

Ms. HAHN. Thank you, Mr. Chairman.

Despite over 40 attempts by my Republican colleagues in the House to repeal, defund or derail the Affordable Care Act, the law is still the law, and it is moving forward to achieve the objective of finally giving the almost 50 million uninsured men, women and children in this country quality, affordable health coverage. Last week, the most long awaited portion of this law went into effect as online health insurance exchanges opened across the country. These exchanges will mean lower costs and expanded coverage for individuals and small firms across the country.

We should all be really pleased that finally the millions of Americans who have lived in dread that an illness or an accident could plunge them into financial ruin will finally have access to good coverage that they can afford.

But today, we are looking at a provision that could potentially impact small businesses and their employees across the Nation. The health care law defines a full-time employee at 30 hours per week. This change was intended to increase the number of workers to whom coverage would be offered. This has been the debate on both sides of the unintended consequences for workers. This Committee has heard claims from employers that they are cutting the hours of their workforce to avoid offering coverage on those employees. Some labor organizations such as Teamsters/Unite Here, UFCW have also expressed reservations about the possibility of perverse incentives created by this 30-hour threshold.

Of course, the law isn't perfect. We may need to make some changes. Since the exchanges just opened last week, I think we might have a clear picture of this impact of this provision if we waited until we have a good sense of the proportion of people who have bought insurance on the individual exchange and when the small business exchanges are a little more established.

I am concerned about how this new definition impacts employees and small businesses, but I'm just as concerned about the widespread misinformation and blame being put on this law, misinformation specifically spread to deter Americans from seizing the very real benefits of this Affordable Care Act.

One of the today's witnesses will discuss whether reduced worker hours are due solely because of this section of law or the economy. We must determine if these numbers are direct impact of the revised definition or some combination of it and other factors, like sequestration or a slow economic recovery.

Accordingly, this hearing will explore the current and future impact of this new definition on our labor market.

As with any other major law, there has been much speculation about how the law will affect small firms. For this reason, it is important that we consider the legislation proposals to address these challenges and work to improve rather than repeal.

This hearing serves as a starting point to examine the issue and start a dialogue so we can address it immediately.

I am open, and the President I believe is open to making sensible improvements in the Affordable Care Act. But when the opponents of this law are willing to shut the Federal Government down and risk the full faith and credit of the United States to destroy or at least sabotage this law, it is difficult to have a real conversation about what is working and what isn't.

I hope that when the politics die down, we can have that conversation. And I think the Small Business Committee has a really important role in ensuring that this new law proves that it is affordable for employers and employees alike.

Thanks to the witnesses for appearing before us today, and I look forward to this hearing.

Chairman COLLINS. Thank you. First of all, if Committee members have an opening statement prepared, I would ask that they be submitted for the record. I would like to now take a moment to explain the timing lights. Each witness will have 5 minutes to deliver your testimony. The light will start out as green. When you have 1 minute remaining, the light will turn yellow. Finally, it will turn red at the end of your 5 minutes, and I would ask you to try as you can to keep it within that time limit, but certainly we will be a little bit lenient if you go over.

Our first witness is Raymond Keating. Mr. Keating serves as the chief economist at the Small Business and Entrepreneurship Council, a nonpartisan small business advocacy organization headquartered in Vienna, Virginia. Among his policy areas of expertise are taxation, regulation, the U.S. economy and other small business issues.

In addition to his position as the SBE counsel, Mr. Keating also serves as an adjunct professor in the business school at Dowling College in Oakdale, New York.

Mr. Keating, thank you for appearing today. You could now deliver your message.

STATEMENTS OF RAYMOND J. KEATING, CHIEF ECONOMIST, SMALL BUSINESS & ENTREPRENEURSHIP COUNCIL; STEVEN HERMANN, VICE PRESIDENT, PAUL'S SUPERMARKET, INC., TESTIFYING ON BEHALF OF THE NATIONAL GROCERS ASSOCIATION; STEPHEN BIENKO, PRESIDENT, OWNER, BIENKO ENTERPRISES MOVING LINE, TESTIFYING ON BEHALF OF THE INTERNATIONAL FRANCHISE ASSOCIATION; AND DEAN BAKER, CO-DIRECTOR, CENTER FOR ECONOMIC AND POLICY RESEARCH, WASHINGTON, D.C.

STATEMENT OF RAYMOND J. KEATING

Mr. KEATING. Thank you very much. Chairman Collins, Ranking Member Hahn, members of the Committee, thank you so much for having this hearing today on the potential effects of the Patient Protection and Affordable Care Act, or ObamaCare, on employment and small businesses. My name is Ray Keating, and as you said, I am chief economist with Small Business and Entrepreneurship Council. I would like to highlight a few points from my written testimony and then add some quick points from a business owner and SB Council member who I spoke with yesterday to get a feel for what he would like to relay to the Committee if he were here.

Number one, obviously it is important to consider the impact of ObamaCare within the context of our poor economic performance in recent years regarding both economic growth and employment growth. Just a quick rundown on a few numbers, economic growth during this recovery has been running at about half of where we should be during a recovery.

We are averaging about 2.2 percent real GDP growth, historical average going back to 1950 is 3.4 percent, and during recovery expansion periods it is actually 4-½ percent so we are badly underperforming. That leads to problems on the jobs front. Throughout the recession and subsequent recovery, for example, the labor force participation rate which has gotten a lot of attention recently has been at a low that we haven't seen since August of 1978, 63.2 percent. Now that certainly reflects an assortment of things going on in the economy, but very much a large number of people simply giving up and not bothering to look for work.

Just to give you a little perspective, if we had a labor force participation rate that was a little more within the historical norm, the unemployment rate right now would not be 7—what are we, 3 percent it would be 12 percent roughly.

Now given the ObamaCare employer mandate and the definition of 30 hours a week as full-time, we need to look at full-time versus part-time employment. As for people who are working part-time but want full-time work, in August this group registered 7.9 million. That is, fortunately, down from a peak of 9.2 million set in September, 2010, but it is far above the pre-recession levels more than double for example the 3.9 level that we registered in April, 2006.

It is also important to recognize a dramatic shift that we are seeing in 2013 as to part-time versus full-time job creation. During the whole recovery, a bit more than 90 percent of jobs created have been full-time. However from January of this year to August of this year, two-thirds of employment gains have come via part-time jobs.

That is a striking number. That is a striking break from what normally happens. And I think it does speak to the issue of how part-time workers are treated under ObamaCare versus full-time.

If we are going to look at job creation, obviously we have to look at small businesses, we are in the Small Business Committee and as we well know the bulk of new jobs net new jobs are created by small firms, small and mid-sized firms.

And if you look at the trend there, we have seen a decline in entrepreneurship on a whole host of levels, whether you are looking at self-employment, business births, the number of employer firms, we have seen a dramatic decline. It is not that surprising, then, that we see a lag in terms of job creation among small businesses in this recovery.

In the testimony, I highlight several polls of small business owners talking about their response to ObamaCare. It hasn't been good. For example, 41 percent of owners in one Gallup poll said they held off on hiring new employees, 38 percent have pulled back on plans to grow their business, 1 in 5 have reduced their number of employees and essentially the same number have cut employee hours in response to the health care law.

We have got a new poll coming out at SB Council that shows that 76 percent of small businesses are not going to hire, unlikely to hire within the next 6 months.

Finally, just, I wanted to hit on this point I spoke with Mike Frederick, who owns a small manufacturing firm in Wisconsin, 57 employees and he relayed several frustrations with the new law including and he put a big emphasis on dealing with the very large administrative costs related to the law. He has got one person that works on this. He can't add anybody else. He is also looking at probably a 30 percent increase in premiums this year, and he faces the very real possibility of having to cut staff to less than 50 workers.

To sum up, in a time of slow economic growth, lackluster job creation, troubling trends on the entrepreneurship front, we would hope that policy making would be directed towards boosting incentives for private sector risk taking, entrepreneurship, investment and so on such as broad and deep and substantive tax and regulatory relief. But unfortunately, when you look at this law and so many other areas, we have been pointed in the exact opposite direction.

Thank you and I look forward to any questions you might have.

Chairman COLLINS. Thank you, Mr. Keating.

I would like to now yield to Mr. Luetkemeyer so he may introduce our next witness. Mr. Luetkemeyer.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. It is my honor this afternoon to introduce our next witness which is Steve Hermann, who is from our district. He is founder of Supermarket Solutions and vice president of Paul's Supermarket Incorporated. He is one of the only locally family-owned supermarkets in the area and he expanded to three different locations in central Missouri with 75 full-time employees and 100 part-time and seasonal employees.

Like so many other employers in my district, the Affordable Care Act and its new definition of full-time employees is greatly affecting

Mr. Hermann's ability to grow the business and employ more workers.

I am proud to introduce him this afternoon. I look forward to his comments with regards to how the ACA is affecting his small business. Welcome.

STATEMENT OF STEVEN HERMANN

Mr. HERMANN. Good morning, Chairman Collins and members of the Subcommittee. Thank you for that kind introduction and for the opportunity to testify on behalf of the National Grocers Association on an issue that is very important to independent grocers and small businesses across the country.

NGA is a National Trade Association representing the retailers and wholesalers that comprise the independent channel of the supermarket industry. Independent grocers account for approximately one-quarter of the total U.S. supermarket industry with nearly $130 billion in sales, and over 944,000 in direct jobs that pay over $30 billion in wages.

My name is Steven Hermann, and I am Vice President of Paul's Supermarket. Our family-owned company has been in business in Eldon, Missouri, for over 45 years. I started working in my family's supermarket when I was 14 years old learning the trade of my grandfather and father. Like many independent grocers, I fell in love with the business early on, and quickly gained an appreciation for hard work and customer service.

Today my family operates three supermarkets in Missouri, Lake Ozark, Eldon and Osage Beach. Like many small employers across the country, we have weathered many economic storms throughout the years and are proud we have never lost sight of the two most important things in our business: our customers and our employees. However we are facing a challenge in our workforce unlike any we have seen before. I am fearful of the unintended consequences of the Affordable Care Act will hurt our employees and undermine our values as a family owned small business.

Under the ACA, the definition of full-time employees has created new barriers for our industry where working an average of 30 hours per week is simply not considered full-time. The supermarket industry employs a large number of part-time workers to help meet the ever-changing needs and demands of our customers which can change from day to day. The ACA created new hurdles for businesses by greatly expanding the number of employees eligible for health plans by defining a full-time employee as an employee who has averaged at least 30 hours of service per week over the course of a month. This new definition of full-time will force small businesses to rethink how they hire and schedule part-time employees. Employers are likely to hire fewer employees, especially full-time employees learning to do more with fewer in order to control costs.

Not only is the law redefining it what means to be a full-time worker in this country, but it is permanently changing the American workforce by interfering with part-time workers ability to earn a living. Part-time employees in need of additional money may no longer be able to pick up an additional shift to pay for unexpected expenditures or earn extra money around the holidays.

We employ a large number of part-time associates, many during our busy summer season, but also others that help staff our store throughout the year. These part-time workers include kids working while attending college, spouses helping to supplement their family's main income, and older associates supplementing their retirement. Unfortunately many businesses may now be unable to provide part-time associates with the hours they need.

We have long felt that our associate are like family, which is why we are proud to offer a wide range of great benefits to our full-time associates, including funding 100 percent of the health care premium after the deductible is met. Our associates have access to a health savings account and the company contributes a small monthly stipend toward that account. Today we currently employ 75 full-time associates and 100 part-time and seasonal workers between our three stores. We are proud of the fact that nearly all of our full-time associates participate in our health plan, and it is our hope that we can continue to provide quality benefits in the future, although it gets increasingly difficult each year.

The commitment to our associates is not without significant costs, especially for a small family business such as mine. Over the years, as health care costs have increased, we have worked hard to maintain the benefits we offer, including adapting our health plan to meet the changing times and employees' needs. In this year alone, health care costs for my company exceeded $300,000, not including any in-house administration, and we are on track for a significant increase again next year.

The supermarket industry operates on razor-thin profit margins, where net profit before tax among independent grocers hovers around a mere 1.65 percent. In this competitive industry, pennies really do count. It can make the difference between making a profit or not.

According to the NGA industry survey, 92 percent of respondents indicated they currently offer health benefits to their full-time employees, which is a testament to the commitment that independent grocers have to their associates. Employers, such as myself, very much want to continue providing quality benefits to our full-time employees recognizing that a healthy employee is a productive employee. However, many businesses simply cannot afford to provide coverage to workers who average 30 hours per week. Thus small business owners will have to make tough choices and many part-time employees will face reduced hours and smaller paychecks.

Independent grocers need the flexibility to be able to manage their businesses and workers' forces to meet the meets and demands of their customers. The burdens placed on our business by this law hamper our ability to do just that and make it more difficult to succeed in a hyper-competitive marketplace. Paul's Supermarket prides itself in supporting charitable organizations and community groups. However, pressures from the health care law could impact our ability to continue that support at the same level.

My strong recommendation to you today is that Congress should do all it can to help businesses by removing any barriers or any artificial threshold that will inhibit our ability to hire workers and create good jobs. One of the most effective ways for Congress to do that is to pass legislation that amends the unrealistic definition of

a full-time employee under the health care law so that businesses can focus on continuing to be an employer of choice in the communities we serve. Thank you so much for the opportunity to appear before the Committee today. I look forward to answering any questions that you all may have. Thank you.

Chairman COLLINS. Thank you, Mr. Hermann.

Our next witness is Stephen Bienko. He is the owner and President of 42 Holdings LLC, which maintains its headquarters Fairfield, New Jersey. Mr. Bienko operates a number of College Hunks Moving Junk franchise operations in various States. Very catchy name there.

These business employ a large number of full-time and part-time college hunks, right?

Mr. BIENKO. Yes, sir.

Chairman COLLINS. He is testifying today on behalf of the International Franchise Association. Mr. Bienko, thank you and we look forward to your testimony.

STATEMENT OF STEPHEN BIENKO

Mr. BIENKO. Thank you. And although I may no longer be a hunk, my mother does think I am, so that is all that counts.

Chairman Collins, Ranking Member Hahn, members of the Subcommittee, thank you for inviting me here today to testify on the affects of the health care law's new definition of full-time employee. My name is Stephen Bienko. I am the president of 42 Holdings. I am a member of the International Franchise Association, I am a former cadet at the United States Air Force Academy and a former trooper with the New Jersey State Police. I own and operate an interstate and intrastate moving company, and I also own 15 franchises of College Hunks Hauling Junk and College Hunks Moving throughout Northern New Jersey, Nashville, Tennessee, and Cleveland, Ohio. College Hunks Hauling Junk and College Hunks Moving offer residential and household moves, office relocations, junk removal, donation pickups and labor services.

I am a proud business owner and offer the service that my communities need, flexibility, and secure jobs for dozens of motivated team members in multiple States throughout this country.

As a franchise small business owner, my livelihood and my ability to provide for my team members depends upon the economy and the strength of Federal policies.

While well intentioned, the Affordable Care Act poses a serious threat to my business' ability to continue providing a fun, enthusiastic work atmosphere and quality jobs for people who want them and deserve them.

For decades, U.S. employers have used 40-hour workweek as a standard for workforce culture. Unfortunately, the Affordable Care Act's provision requiring employers to provide coverage to full-time employees and defining full-time as 30 hours, will cause many employers like me to simply alter the employees' hours in order to run a successful small business. This puts all of us at a loss. Employers must implement new workforce management methods and some team members will receive fewer hours and reduced take-home pay, not to mention they will still be ineligible for employer sponsored health coverage.

I currently have 72 employees in three short years. Twenty of those are part-time. In 2014, we are planning on hiring an additional 34 part-time workers throughout my locations. Many of these part-time workers work 3 days a week. It is simple, but 3 days a week, 10 to 12-hour shifts daily. These part-time workers are attracted to our company culture because the positions offered can easily fit with their schedules, whether that includes school, child care coverage or something else within their family needs.

During move season, what our industry considers the busy time, we typically have a large number of customers who are trying to schedule their family's move. I am sure all of you have gone through that. Many of my part-time team members will try to fit as many as five shifts in during that time to make additional income for themselves and their families.

Currently, it is not uncommon for a part-time team member who normally works 25 to 30 hours per week to double their work hours during that time period to 50 or 60 to make that extra money.

I currently offer health plan coverage to our full-time team members, but in order to manage our health costs, I will need to limit the hours worked by our part-time team members. I have offered my full-time team members' health coverage even without the employer mandate, and I have every intention on continuing that coverage.

However, the increased costs of doing business by providing coverage to employees with fluctuating schedules that only occasionally put them in full-time status will leave me no choice but to scale back my part-time workers' hours. I consider myself lucky because I have succeeded with an ambitious growth plan over the last 3 years. But many small business owners have not. Not only has the employer mandate discouraged job creation and business expansion, it also has damaged existing jobs by including a misguided statutory requirement that discarded more than a half a century of established labor policy by now defining full-time as 30 hours. Culture is everything in a small business.

Without a doubt, the 1-year delay of employer mandate is an important reprise for franchise small businesses as they prepare for ACA implementation. Unfortunately, it is a short-lived solution. The 30-hour definition is the major change that could have far reaching consequences we have not yet begun to see. The revision of a new definition of full-time employee for the purpose of the Affordable Care Act is a commonsense solution that will put the ACA in line with many other Federal wage hour regulations.

Thank you for allowing me to testify today. I will look forward to answering any questions, and as a citizen, I am open to conversations.

Chairman COLLINS. Thank you, Mr. Bienko.

I would like to now yield to Ranking Member Hahn so she could introduce our last witness.

Ms. HAHN. Thank you, Mr. Chairman. It is my pleasure to introduce Mr. Dean Baker, the co director of the Center for Economic and Policy Research. Mr. Baker previously worked as a senior economist at the Economic Policy Institute and served as a consultant for the World Bank and the Joint Economic Committee.

Welcome, Mr. Baker.

STATEMENT OF DEAN BAKER

Mr. BAKER. Thank you. Thank you Ranking Member Hahn and Chairman Collins. And I appreciate the chance to address the Committee. My name is Dean Baker. I am codirector of the Center for Economic and Policy Research, and I hear lots of talk about our research, research I should say done with my colleague, Helene Jorgenson, looking at the impact of the hours of the sanctions, employer sanctions on employment practices through the first half of 2013, the period prior to when President Obama announced that the sanctions would not go into effect for 2014. So in other words, this is a period when employers had reason to believe that they would be subject to the sanctions based on their employment for 2013.

I will make three main points. First off, I want to talk a little bit about the plausibility of some of the claims that have been made about the ACA and make a point that at least some of them clearly are not plausible. Secondly, I will review the evidence the analysis that I had done with Dr. Jorgenson, and last, I want to say a couple of things what we might say about what we might imagine would be the long-term impacts of this particular aspect the 30-hour requirement in the ACA.

On the first point, plausibility of some claims, there have been a lot of claims about how the ACA would cause different problems, how it is responsible for the downturn and the weakness of the recovery, it is important to point out that the first time you really have a direct impact of the ACA on employment is in 2013. There are many people claiming that businesses were deterred from making hires in 2010, 2011, 2012. It is very difficult to see that as credible if you look at the way the labor force behaves. Specifically, we have an enormous amount of churning in our labor force. In the average month, we have roughly 4 million people leave their job, a bit less than 3 percent of the workforce. The idea that an employer would not hire someone in 2011, 2012 because they were worried they would be, say, over the 50-person limit come 2013, that really isn't plausible given the normal churning of the labor market. It is extremely unlikely that an employer would even need to lay someone off much less simply not replace someone who was hired. So that part really just is not very plausible.

Second, in terms of the impact of this employer sanction, I know no employer, I am an employer myself, you don't want to be stuck with an additional bill, but just in terms of some context, it is a $2,000 sanction, there is a lot of research on the impact of minimum wage increases of 15 to 20 percent, the vast majority of which funds little or no employment effect. It is a little hard to believe that an employer sanction that would be less than 10 percent of the pay of a worker who earns $10 an hour full-time job would have that large an employment effect.

So I simply don't think some of these claims on the face are very plausible.

Now in terms of the evidence, Dr. Jorgenson and I looked at the current population survey which is the most commonly used survey for looking at the labor market. This is where we get our employment data every month. We didn't get this month because of the shutdown. But this is where we get the jobs numbers that everyone

hears about every month, and we looked at the percentage of workers we focused on originally 26 to 29 hours a week with the idea that you have a lot of employers put people just below the cutoff.

Now it turns out we did find a very small increase in the percent who were working in that 26 to 29-hour range in 2013 compared to 2012. It went from 60/100s of 1 percent of the labor force to 64/100s of a percent. Now we might originally think that might confirm the story that workers are having their hours shortened, but we looked at it more closely, and it turns out that actually that increase came at the expense of workers working less than 25 hours a week or reporting that their hours varied.

The number of workers who were working 35 hours a week or more in 2013 was actually a larger percentage of the workforce than it had been in 2012.

So in other words, our data is showing the complete opposite of the story. I won't say there was a big increase in full-time employment, but it goes the wrong direction for the change that the critics of the ACA have raised.

Now, the last point I wanted to raise is simply talking a little bit about the longer term story. When you put a specific cutoff, a 30-hour cutoff whatever it might be, you have to imagine over time, employers will respond to that and there actually is an interesting example to look at. Hawaii has had an employer mandate on health insurance for about 30 years. There has been some research on the effect. In that case, the cutoff is 20 hours. The research found that it did have, after a long period of time, a very modest effect for the bottom quintile of the pay scale it reduced full-time employment, or I should say employment above this 20-hour cutoff by roughly 3-½ percent or for the total workforce roughly seven-tenths of 1 percent.

Now before anyone runs off assuming that that is a very bad thing, it is important to keep in mind the vast majority of workers who work part-time do so voluntarily that is true even today where more than two-thirds are working part-time voluntarily.

Typically it would more than 80 percent. That is not necessarily a bad thing that we see a small increase in the number of part-time jobs available to people who might be raising children, have other reasons to not want full-time employment, and important to keep in mind there is nothing natural about the length of our workweek, that came about in part because we have had a condition of having health care insurance as a fixed cost for employers which is likely make them prefer a worker overtime even paying them time and a half or double-time rather than hiring a second worker. That also is not natural. If we change that by making it more easy for people to get insurance other than through their employer, to my view, that is more consistent with the free market. Thank you for listening.

Chairman COLLINS. Thank you, Mr. Baker.

At this point we will start our questions, and I will delay mine until the end. I am not sure when votes are coming. They may come at 2 o'clock, so we will get this through this as best we can but at this point I would like to yield 5 minutes to Mr. Luetkemeyer.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Mr. Hermann, I just want to start with you this afternoon. And what are your plans to try and be able to stay competitive with the chain grocery stores that are in your area? You are a mom-and-pop shop, and we thank you for that because as a mom-and-pop shop you are a whole lot more engaged and supportive of community activities and much more sensitive to the community than a lot of the chain folks. What are your plans to try and stay competitive with your competition and still be able to maintain the quality of service with the number of folks you have and trying to deal with the 30-hour situation? I know some folks with, you have three separate stores, they go to three separate organizations, three separate corporate entities, some go with more part-time some temps, some downsize, what are your plans to be able to maintain your stores and compete?

Mr. HERMANN. That is a great question. As a successful business operates, they have to make plans. And one thing we look at, first with our existing employees, is that they are our family. We are a small community and we are going to take care of them as best we can. Health insurance is a big deal. And what we have to look at is at our future hiring practices. We may not be able to hire on someone with the potential of being a full-time employee. We may not replace somebody, we might have to do more with a little less. The other thing, too, tough choices is our part-time employees, we offer a 401(k) after they have been there for a year. We might have to look at getting rid of the 401(k) and we have a great 401(k) program that my father put in place back in the 1990s and we match 100 percent up to 5 percent of gross pay. And you look at areas like that and you mention the community.

As a small businessman, charitable organizations are huge. It is the people that work with us. I am fortunate to be on the school board and we have a town that is a title 1 district, so we are 50 per cent free and reduced lunch. There is a program called buddy pack, and buddy pack unfortunately has been defunded through ARA which is another thing, but where it has been funded from is local businesses and churches in the community. Things like that could potentially suffer.

So I hope that help paints the picture there of what we are looking at. But our existing employees, we are going to take care of them, they are family. They used to weigh me on the scale when I was a baby and they are still there. So, it is tough. It is tough. But we are going to do the best for our community and that is what we will do our best to be successful and stay in business.

Mr. LUETKEMEYER. Mr. Hermann, Mr. Bienko, you guys did build it, and we appreciate what you have done.

Mr. Bienko, would you like to answer the same question about how you are going to try and maintain your competitive edge with this Affordable Care Act trying to squeeze the hours of some of your employees? I know you have kind of a unique situation there, a lot of seasonal and part-time employees. Are you going to wind up cutting back some of those hours on some of those part-time folks so you can put more part-time people in there? What are your plans?

Mr. BIENKO. Our competitive advantage is just that, it is us trying to actually change an industry in the moving world, and that

has been our mission from day one is to be a true change agent in that industry. What we are trying to do is offer opportunities for young individuals to get their career start, not just a job start, with our organization and each have individual work on the trucks even as young college graduates to begin their process in their career on our vehicles in the moving world and in the hauling world.

With that, we do have a lot of them as part-time workers. If we have to reduce those types of hours that drastically, those quality high end individuals that we are striving to hire will not be interested in working with us.

That prevents us from growing.

Our expansion growth and expansion opportunities in 2014 are taking on three other cities to provide our services and our job opportunities in three other cities throughout this country. It may affect that growth strategy because of the amount of part-time workers we hire in the beginning. With that, we will have us draw back on those part-time employees.

Mr. LUETKEMEYER. You know, one of the things that Mr. Baker said a minute ago that two-thirds of the people who work part-time want to do that, that means one third of the people that are working part-time who don't want to do that, and I think that is the tragedy and that is the point that we forget about is those folks who are out there who want to work full-time and can't do that and this bill is going to force a lot of that to happen.

Mr. Bienko, you had a unique comment a minute ago. You said culture is everything in a small business. Would you like to elaborate on that just a second?

Mr. BIENKO. Sometimes in a small business when you are starting out, you are not in the, you do not have the ability to pay the highest wages. And I have always been a believer that it is not about the wages you are paying the employees, it is about the culture and the opportunity you present for them. So our environment is all about culture. It is about providing an opportunity for our employees, for our team members to get a start, to create a vision for them to give them an opportunity.

Many of our employees come as college graduates, however they have never been given the backing and opportunity for someone to say, you know what? You have an opportunity to create something out of your life. And we find a lot of them even with 4-year college degrees that have absolutely no idea where they want to be when they grow up.

We have created a culture that drives them to success. I have always believed in success breeds success. And when you have other successful people around you that are striving and aiming for that same goal, it attracts more and better people.

So when I say culture is everything, especially when you are 3 years in in a start-up and having a high amount of demand on a lot of people and not fully capable of paying the higher wages at this point in time, if you don't have culture, you die.

Mr. LUETKEMEYER. Unique to a small business. Thank you very much for your time this morning, gentlemen, this afternoon, and I appreciate your testimony. With that, I yield back, Mr. Chairman.

Chairman COLLINS. Thank you Mr. Luetkemeyer. At this point I would like to yield to Ms. Hahn for her opening questions.

Ms. HAHN. Thank you very much, Mr. Chairman. I am going to do the same thing that you did and I am going to leave my questions until the end and turn it over to my members.

The first one I would like to yield to is the ranking member of our Small Business Committee, Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you. Thank you, Mr. Chairman, for yielding. Mr. Baker, is there any empirical evidence that one-third of part-time workers are working part-time as a consequence of the ACA?

Mr. BAKER. No, absolutely not. The reason there was a big increase in involuntary part-time employment was we had the downturn, that happens every downturn. This downturn, of course, is much more severe, it is a very different sort of downturn. We had— the collapse of the housing bubble caused it, it was an extraordinary crisis, I am sure I don't have to tell people about this. The people here remember this, and that led to a large increase in involuntary part-time employment. And that has been falling over the last 4 years as this economy has slowly recovered. So the rise in part-time employment predated even the passage, much less any implementation of the ACA.

Ms. VELÁZQUEZ. And basically your numbers concurred with the Federal Reserve Bank of San Francisco that found and concluded in their research that the share working part-time is in line with historical norms, and concluded that part-time work is not usually high relative to levels seen after the 1980s recession.

Mr. BARKER. That is exactly right. So other people have looked at it, there is another study which I can't place offhand, but I know of no studies that have found and opposite conclusion. Basically every study I know that has looked at the data has found that involuntary part-time has followed the same sort of pattern that you would expect to see given the weakness of the economy.

Ms. VELÁZQUEZ. Also there have been two recent surveys conducted among small businesses, and one of them is from NFIB. And they found that the biggest obstacle reported by businesses were economic uncertainty and consumer demand.

Wouldn't these factors play more of a role in an employer's hiring decisions rather than implementation of ACA?

Mr. BAKER. Absolutely. In the NFIB survey, in particular, I recommend to people because that dates back to the 1980s, so we have reliable data going back for close to three decades now, and they ask the same question of employers. I don't know if they never changed it but basically it is a similar question over that period: What are the biggest problems they face? And they consistently answered during this downturn, the lack of demand, so clearly that is their main obstacle to expanding.

Ms. VELÁZQUEZ. So meaning that hiring practices or decisions will be driven by economic uncertainty, the impact of sequestration, and the lack of consumer demand.

Mr. BAKER. That is right, anything that slows the economy, anything that pulls money out of the economy, sequestration being one of the things that pulls money out of the economy, we had a reference earlier from Mr. Keating to comparing this recovery to past recoveries. One important thing to consider past recoveries, every prior recovery we have had a significant growth in government em-

ployment, mostly State and local levels throughout the recovery. If we had followed the pattern of prior recoveries we would have roughly 7- or 800,000 more government employees than we did at the start of the recession. Instead we have about 6- or 700,000 less.

Now government employees spend money like everyone else does, so if you get rid of government employees that is less demand in the economy. That is clearly one of the factors, I am not going to say the major factor, but it is one of the factors slowing growth slowing employment.

Ms. VELÁZQUEZ. We have held hearings in this Committee, and I held a roundtable in my district with the manufacturing sector. And what we hear is that they face a shortage of workforce, of skilled workers. Don't you think that a way for manufacturers and business owners be able to bring in high-skilled workers is by offering health care benefits?

Mr. BAKER. Absolutely, and I think my colleagues on this panel have made that point very well. They know workers value health care benefits, and if you can offer a good health care benefit, that makes the job more attractive to employees. So that is why most employers, most large employers certainly, and, in fact, most small employers offer health care benefits to their workers.

Ms. VELÁZQUEZ. Mr. Keating, in your written testimony, you say you blame the Affordable Care Act for reducing job growth and employment in 2010 through 2012, yet the sanctions impacting employers were not scheduled to be in full effect until 2014, and now the employer mandate has been delayed. Since 4 million people leave their job every month, is it really plausible that a business wouldn't want to hire someone in 2011 or 2012 because they were afraid of the penalty in 2014?

Mr. KEATING. Yes, of course it is plausible, because actually businesses and entrepreneurs plan unbeknownst to what we heard earlier. When you run a business, you have to figure out what your costs are today, and you have to figure out what your costs are a year from now, and try to estimate going out. So when you have a law that has passed in 2010 that has looming mandates and regulations and so on and tax increases, that is certainly going to impact the decisions that business owners make. That is just the reality of the business world.

Incentives come into play. I was glad to hear people talking about incentives before. As an economist, I try to hammer that home with my students. Incentives matter. Economics ultimately is about incentives. So, yes, when you put the ObamaCare bill in with everything else, I mentioned at the end of my testimony, that it is part of an unfortunate policy agenda that has been pointed against faster economic growth and more job creation. We would want to, as we have seen in past, what is the best answer to a poor, to coming out of a recession and growing an economy? It is not tax increases and more regulations on businesses and entrepreneurs and investors. That is exactly what we have done. So I would say that this is very much part of the equation, yes.

Ms. VELÁZQUEZ. Yeah, it could be, and also the lack of the demand.

Mr. KEATING. I am glad you touched on that. Right. The we can't take the economy as just being, well, it is bad, so therefore, we just

have to deal with it. The question is why is it bad? Why did we have such a deep recession and why are we now over 4 years into a recovery having one of the worst recoveries on record?

Now there is a lot of debate on that I am sure Mr. Baker and I would disagree, but I would say a huge part of it, in fact, I would argue the biggest part of it today that is holding us back is this policy agenda that is pointed in an anti-growth direction.

Ms. VELÁZQUEZ. Mr. Baker, would you like to comment?

Mr. BAKER. Yeah, well, first off, in terms of businesses planning, of course they do, and presumably businesses know that their employees turn over. So if they were worried in 2010 and 2011 that they are making hires that put them over the limit for 2013. If they are doing good planning, they know that they can count on some of their workers leaving so that really wouldn't make a lot of sense.

In terms again, the downturn, I have written on this at length as have others, we had a collapse of the housing bubble that was driving the economy and none of us has a magic elixir to simply replace that, and this is a qualitatively different recession. Some of us said that at the time, we warned that the housing bubble was easy to predict, or at least I thought it was easy to predict so there are no surprises to me, it has really followed pretty much the textbooks. So, and if we look at business investment which is if this really is the case that is actually pretty much back to the pre-recession levels, so unless we know something George W. Bush was doing that was very anti business back in 2007, it is hard to see anything Barack Obama is doing because it is having no more effect.

Ms. VELÁZQUEZ. And on top of that, the housing bubble and the impact of sequestration on an economy that still is struggling.

Mr. BAKER. Well, again, we need every source of demand we can get, and government demand is just like any other source of demand. If we cut back government spending, cut back government employment, and we are pulling out a source of demand for the economy, so that certainty slows growth. And again, in terms of the housing bubble we are not going to replace that at least not in any easy way that I could see. And frankly, I would not want it to be replaced by another housing bubble. That would not the way to go but I don't know of any magic elixir that just says okay, we will replace that source of demand, which again, by my calculation, somewhere around $1 trillion a year in lost demand.

Ms. HAHN. Thank you, Ms. Velázquez. Shall we yield back?

Chairman COLLINS. Thank you. At this point I would like to yield to Mr. Rice 5 minutes.

Mr. RICE. Thank you. I am sitting here looking at a Forbes poll, when asked will ObamaCare make health insurance more affordable, 69 percent said no, online poll 78 percent of small business owners think the law should be repealed, 93 percent do not want to change from their current plan to plans required under ObamaCare. And I want to read to you a little excerpt from a constituent I got yesterday, or excuse me, the day before. This fellow is in the steel business. I am going to redact his name, and obviously, he has to compete internationally and I know that when you are talking about competition, some of you people some of you guys

in the grocery store business and the moving business are competing domestically but not necessarily with international competition.

And so I was really interested.

I am very concerned about American competitiveness. And I think that a lot of our government policies make—American businesses compete with anybody across the world and our workers sure can, that our government hamstrings us with uncompetitive tax system, uncompetitive regulatory environment. And so he is talking about how it affects his business, and he says, you know, we are already fighting for our lives against the Chinese whose government is helping them to compete with various subsidies and tax breaks. At the same time our government is adding to our costs, not helping us to reduce costs.

It is obviously what this does for jobs in this country. And he goes on to say that the increase, he has got 90 employees, the increase in the health insurance will be about $100,000 for 2014 over 2013, and that he currently buys policies from Blue Cross Blue Shield who has decided they are no longer going to sell the type of policy he has as anymore, I guess, because they can't under the minimum required coverage under ObamaCare.

So, I guess, Mr. Keating, going beyond this part-time worker aspect, does this law make our domestic companies more or less competitive in the world?

Mr. KEATING. Well, the bottom line, it makes them less competitive just due to the costs. Again, you cited polls, and poll after poll confirms what kind of economics 101 teaches us that if you add government costs, whether through taxes or regulations and so on onto businesses, they are going to become less competitive obviously, and when you think about what our economy is like today in terms of the international marketplace, I think it is a really serious impediment.

The gentleman that I spoke to yesterday who has a small manufacturing firm in Wisconsin, he is just not a domestic firm, he sells the parts that he makes for all sorts of machinery globally. So he is very much involved in that international competition.

And he is, when he looks at the premium increases that he is calculating, that puts him at a serious competitive disadvantage absolutely.

Mr. RICE. Mr. Baker, in terms of the plausibility of people making hiring decisions today based on a law that the employer mandate won't go into effect until next year, I have had people in my office, I had a guy in my office 2 weeks ago who has a franchise business in two locations and 40 employees, and he has declined to open his third because he will go over 50 employees. So he is making a decision today based on opening a business that will affect potential employees. It is absolutely plausible people are going to make decisions based on this right now.

I have a friend and a former client that is in the Myrtle Beach, South Carolina in the tourism business employing 1,900 people, and they are absolutely moving people from full-time to part-time when this law takes effect. They haven't done it yet, because the law hasn't taken effect yet, but it will absolutely have an effect on the service economy in my area. Do you want to comment on that?

Mr. BAKER. Sure. Thank you for asking. Well, a couple points I would make. First off I am sure there are some people who are making decisions, you know, based on this and you know the gentleman you were talking about, you know, that may well be one of them it is clearly not showing up in the data for the first 6 months of 2013 when they thought the employer sanctions would be in effect. So in aggregate, however many people might have been doing that, it was too small to show up in the data.

Now in terms of moving people from full-time to part-time over a longer term, I would be surprised if there is not some of that going on. But again, the point I was trying to make and perhaps I didn't make it clearly, we have a lot of people in this country who choose part-time employment. So the fact that you might have some employers that are offering part-time work, that would actually be consistent with what many people desire.

So this isn't something I would expect to see overnight. I would expect to see it, in the case of Hawaii, didn't even show up after 10 years, it was only after 20 years that it was visible in the data.

Mr. RICE. One more quick thing, in the Budget Committee I asked Doug Elmendorf, who is head of CBO, what his estimate of job loss from ObamaCare was, and he said CBO's estimates is 800,000 full-time jobs lost as a result of the implementation of this law.

Mr. BAKER. My understanding of Dr. Elmendorf's comment was that was mostly people opting not to work because they would have the option of getting health care through the exchanges rather than through employer provided health insurance.

Mr. RICE. My time is up, I yield back.

Chairman COLLINS. Thank you. Unfortunately, it does look—not does look, votes have been called, and we have a number of members that still have questions to go. So what we are going to do is adjourn. It is a quick two series votes so I am guessing we will be back in less than 30 minutes.

Unfortunately, where you see 11 minutes now you can add about 10 to that because they always hold over that first vote. But we should be back in about a half hour, at which point we will adjourn for right now for about 30 minutes and reconvene after the votes.

[Recess.]

[2:33 p.m.]

Chairman COLLINS. The hearing will come back to order. Let's see that was a little more than 30 minutes, but at any rate we are back, and I appreciate the witnesses all coming back. At this point in time, I guess I will yield myself time for some questions and then we will go to Ms. Hahn and see if any other members come back.

Ms. HAHN. The important members come back.

Chairman COLLINS. Yes, thank you, Mr. Luetkemeyer.

I am a small business owner, I have been an entrepreneur for 40 years, so I know what is going on. But I have also, in this role, I can remember asking the Director of the IRS in charge of implementing the laws, I asked him a couple of questions, so I am just curious if Mr. Bienko or Mr. Hermann could even answer these, because as we are preparing for the employer mandate, and while the penalty has been delayed, the mandate has not been delayed, as

has been misspoken time and again. I hear people, both sides of the aisle, the administration saying the employer mandate has been delayed 1 year. No, it has not. The penalty associated with it has been delayed.

Ms. HAHN. Right.

Chairman COLLINS. The other thing to point out to everyone is that when you try to determine who qualifies and whether your company qualifies on the 50 employee level, it is the 12 months that precede the year. So now relative to being charged with a penalty, the buckets or the measurement starts January, so in less than 3 months. So when people talk about impact, starting in January you have to put all your employees into the part-time or full-time bucket and calculate the hours and the full-time equivalents. You do that each month for 12 months during 2014 and then divide by 12 to determine whether or not in 2015, you hit the 50-employee threshold.

So I know I said—I asked the head of the IRS and we submitted them questions and I was promised a prompt response, and I guess I am still waiting, that was several months ago. But I said, Mr. Director—and I am asking—for 5 or 6 days, but not 2 months, but so as small business owners, here was the question: Full-time employee, who would, say, normally work 40 hours a week so 160, 170 hours a month, takes 2 weeks vacation, so he only works 80 hours in August. Is he full-time or part-time in the months of August? Would either of you know an answer to that?

Mr. HERMANN. I believe that would be under your benefit plan. In our business, we have paid vacation up to 4 weeks——

Chairman COLLINS. I am saying relative to the IRS calculation of which bucket you put him in. He only worked 80 hours, he was paid for 160, but do you put him that month in the part-time bucket because he only worked 80, and you count his 80 hours to do your FTE equivalent, or because it was paid, does he go in the full-time bucket. The head of the IRS couldn't answer that question, but he does expect you to know exactly which one to put him in.

Now the other one I asked him, and again, I know it is difficult but this burden is falling on to the small business owners in their HR departments. Many workers might, in any 1 month, work over 130 hours, even if they are part-time based on overtime and so forth, but then the next month they don't; so they work 135 hours in January, they work 97 in February, they work 161 in March, they work 82 in April. Well, you know how you put them in the buckets each month, if it is over 130, they go in the full-time bucket, if it is less you accumulate their hours, divide by 130, get the FTEs. But now you're into 2015. They worked 6 months, and they were in the full-time bucket that prior year, and for 6 months, they were in the part-time bucket. Do you have to give them health insurance or not?

So this is the tough thing about the law. When the regulators set definitions, it is how to you implement it? And I'll say, as we are in October, and in the next two—and by the way, the mandate has not been delayed, just the enforcement of the penalty. The head of the IRS who is in charge of implementation can't answer those questions. So again, it tells you this isn't ready for prime time. I just bring that up, as I am small business owner myself, and we

have those very situations and we don't know as we are going to be putting them into buckets.

And I guess the other obvious thing is, we will see what happens as we move through, but a question maybe for Mr. Keating, because I have heard people talk about why 30 hours, where'd it come from? It has never been there before. The suggestion has been twofold. One was, we'll have small businesses just provide health insurance to more people. The other more cynical one is, it was a money grab that knowing that this would subject them to penalties, it was a way of raising money to pay for the expansion of Medicaid, or maybe it is a little of both. I am just wondering Mr. Keating, if you have a thought on that?

Mr. KEATING. That goes to my public choice economics as to what the incentives are in government. And just based on that, I would say it is probably a combination of all of the above. And to backtrack a little bit, when I get to speak on various panels about this law from an economist's perspective, and interestingly often, there are representatives from the SBA or various government entities, and most of the audience are obviously small business owners struggling to figure this out. And they have very pointed questions about what this means for their business, and I would say at least more than half the time the people from the government that are there representing it don't have the answers. And that says to the business owners what, the folks implementing this don't know, how am I supposed to possibly figure this out, and then it goes to the issue of how many employees you have to—how much time and energy goes into trying to figure this out when I talked about my testimony we would hopefully want the time and energy and resources going to something productive in terms of expanding the business and creating jobs.

Chairman COLLINS. I think that goes back to the human resource cost. So Mr. Hermann, you are not here only representing yourself, but also other franchise owners, or is that Mr. Bienko? I know a lot of franchisees have lot of part-time workers, and by and large, from what I have been told, those workers didn't sign up or didn't come in looking for health care, they were there to supplement their income, if you will. Many of them are working 37-½ hours and have now, in fact, had their hours cut to 28, 27, and I just wonder because I know Mr. Baker was saying that the data doesn't show it, but then again, the data always lags. Are other franchisees sharing with you as I heard from many that they are, in fact, taking action to cut the workers under 30 hours?

Mr. BIENKO. Yes. And Mr. Collins, if I can first comment on your previous question regarding the new laws and regulations and the controversy that it causes for a small business owner, the IRS can't figure out what to do or to get back to you on it. A small business owner, as you know, your time needs to be spent on the growth of your business, not trying to figure out laws and regulations. Each and every second that you detract from your core business value is a decrease and revenue and decrease in growth.

So I wanted to make a point on that that we don't have the time and the opportunity to spend it on trying to figure out new regulations that are uncustomary to what we currently have.

We have seen multiple franchisees, and the ones I have spoken to myself that have decreased the hours or are planning on decreasing the hours on their part-time employees. One of the biggest things about being a small business owner is that you have to plan three to five years in advance. If you are not doing that planning, no one else is doing that planning for you as the business owner. You need to be looking out for where your business, where your employees are going to be in 3 years, not just 1 or 6 months. So you have to take into account when you are doing your budgeting in 2013 as we are going through right now, we are not planning for 2013, we are planning for 2015, 2016 and 2017. And we are taking into account what is going come ahead of us.

So it is not just about hiring new employees, we plan on having those employees. Those employees may change, but the system and the mandates don't change. So we need to take that into account and know that we are going to have X amount of additional employees. We need to be able to properly fund those employees and plan for them.

Chairman COLLINS. Another quick question for Mr. Bienko. I know a lot of companies have health insurance plans that they and their employees thought were designed very well for their business from a cost perspective and so forth. In many, from what I am hearing, those plans are no longer available, unlike when the President said, if you like your health care plan, you can keep it. Well, you can't keep it if it is not offered anymore. So I am curious of your college hunks, how many of them needed maternity care?

Mr. BIENKO. Zero.

Chairman COLLINS. Okay, and I have to assume how many really needed prescription drug coverage?

Mr. BIENKO. That varies. And the reason that varies is an issue that I talked to them about on a consistent basis, I want them to care about themselves and I want them to care about their health. I don't want them just to go because they have an opportunity to take a plan, and that is an open door for them to look for or each and every ailment they might have to go search out for a prescription medication. I want them to know how to take care of themselves and become healthy individuals and not just rely on something.

So we have actually had that conversation in our, what we call our all-staff meetings that we have each month where we either bring guest speakers or have internal conversations. And the last conversation I had with them was based around taking care of themselves is their best opportunity to lower any cost that they may have. So it does vary between the individuals, but inside our system, we are trying to cut back on that as much as possible.

Chairman COLLINS. So Mr. Hermann, I am curious from the policies that you have had versus now the policies you are being offered, which now have to include maternity care, they have to include mental health, they have to include prescription drug coverage, health club membership. There are things now that are mandated and not every workforce is looking for those benefits, and now the day of an owner designing a health care plan to meet the needs of their employees has now been taken out into more of a one size fits all.

So I am curious, Mr. Hermann, plans that you have offered to your employees, are they being offered now or if had you to adjust now to the minimum benefit plan that is required by the ACA?

Mr. HERMANN. Well, we have been blessed to offer our employees a robust plan, and our plan already met the requirements of ACA so—what we have done, though, is how are we going to control our costs? And we had to get inventive on that and look at new ways to handle it, and potentially means as a company taking on more of a risk in order to manage those costs. What we have done is gone to Captive and, Captive is sort of a reinsurance program that allows smaller businesses to go out with a group of other businesses, but that is more risk. I mean, we are taking a risk as with anything. Health insurance is not about when you buy it, you are not supposed to be taking a risk. But this forces us to go out there and take these risks to hope that we manage it, you know, we are taking our own shoulders, meaning more administration costs.

So put this in—you know, the health insurance is supposed to be a benefit, and as a small employer, I am supposed to be able to go to somebody and get insurance and not have to worry about it, and this has put us in a predicament that we have got to also understand the insurance law beyond what we need to.

Chairman COLLINS. Thank you. Mr. Keating, one last question and then I will turn it over to Ms. Hahn. But one question that is been raised, and I wonder if you have heard this before, and that is, take the case of a company that has employees working 37-½ hours, they did not go to work there for health insurance, did not expect health insurance, but now they would be—the company would be required because they are full-time to offer to pay that $2,000 penalty.

So the company cuts them very deliberately from 37-½ to, say, 28 for the sole purpose frankly of avoiding having to pay—that provide that health plan. The employee wants to work 37-½, the company would like them to work 37-½, they can't afford to give them at a donut shop health care, and they also can't afford a $2,000 penalty.

So this is very real life and I am actually using a real-life example. Now lo and behold there is laws called ERISA. And ERISA states very specifically if a company cuts the hours of a worker for the sole purpose of denying a benefit then they can be fined and brought up on charges, that is what ERISA states.

So you think about this case, the employee is not getting health insurance now, didn't expect it, doesn't want it. It is true though, the sole reason that their hours are being cut is to avoid giving them a benefit. Now to me, they are violating ERISA. In complying with the ACA and to the extent of keeping their business open because they can't afford the insurance or $2,000, has anyone looked at that—I will call it a conflict, a very serious situation of a company actually breaking the law in complying with the ACA.

Mr. KEATING. I have not looked at it myself, and I haven't heard of that particular example, but it goes along with other examples talking again to business owners and listening—they are getting—I always tell people listen, what you need to do is, unfortunately, get a good accountant and lawyer and figure this out, but make sure you are getting the right advice.

The very disheartening situation, in addition to what you just laid out, are other business owners that have made decisions—splitting their companies thinking that they could do that, and you can't do that under the law. Yet they are getting advice from the people—they are doling out money to get advice from people, and this is the advice that they are getting. So that, unfortunately, is not unique in the sense that, again, who really has a handle on all of these issues and all of the costs, and this creates obviously all the uncertainty that we have been talking about for a very long time now.

Chairman COLLINS. Yeah, I think a couple of things that are misunderstood, you can't split your companies, you also can't use temporary workers. A lot of folks have said I will go hire temporary workers, they are not on my payroll. In that instance, not only do those workers count for the business that is using them, but the person running the temporary service agency is also hit with the same thing. So that workers actually counting in two different companies, as unfair as that sounds.

Mr. Luetkemeyer, do you have any other questions you would like to ask?

Mr. LUETKEMEYER. Thank you.

Chairman COLLINS. If so, we will yield 5 minutes to you.

Mr. LUETKEMEYER. A couple quick questions with Mr. Keating. One of the comments that you made that you are working with the entrepreneurship group, how is this ACA affecting start-up companies? Most businesses start out as a small business, and then grow to whatever size they get to. Is this affecting a lot of start-up companies being able to get started? Has your group done some research on that?

Mr. KEATING. I think the one people don't think of actually that does come into play is the individual mandate, because when you talk about somebody starting up their own business, that is—now they have to buy their own health insurance or pay the tax that could increase up to, I am trying to remember the percentage, by 2016. The point is you do have a situation where people again are losing resources that could be used to start up their business number 1.

I think beyond that, you have got this air of uncertainty, questions, costs. If I get this business up and running, what are going to be the costs on the regulatory front in term of Obamacare? You have got to plan, as the business owners here talk about, and I talk about my MBA courses, you have to have a business plan, and you have to be realistic with it, and lay out where you want to go and that is from the very startup stage, that is an ideal scenario. So how does that all factor into the equation in terms of the total benefits package if you are looking to hire people and bring them on board, how is that going to effect the equation?

So yes, I have not seen any studies that say, you know, this is affecting startups in this way. Again, I don't think we have that information yet. But based on, again, good old economics 101 incentives, it is clearly a negative in the equation. And just a real quick point, all of things that we are talking about here, the bottom line is it that it is an additional negative. Now you can debate how much of a negative it is for various businesses and it will range

from business to business, but it is a clear negative in the equation in terms of cost for businesses, that is the bottom line. In this environment, why are we going down this path in the first place is the question.

Mr. LUETKEMEYER. One of the figures that just jumped out at me was the one in your testimony you mentioned a while ago is 76 percent of the small businesses are likely not to hire in the next 6 months—and with other numbers in here with regards to how many are pulling back the number of employees that they have as well as cutting your hours.

Whenever you look at small businesses as being the drivers of our economy that just immediately shows there is a blanket of over this entire economy with regards to ability to generate jobs. And I think you probably could extrapolate from that that there is not a whole lot of new job creation going on out there as a result, unless there is a particular niche industry of some kind.

Mr. KEATING. Right. Well, the energy industry is great, right. Yay. When I go out and talk to people, I can talk about the energy industry and how well they are doing. But yes, across the board, again, the numbers are clear in terms of where we should be in term of job creation during this recovery and where we actually are. You can pick your survey whether it is a household survey or the establishment survey, we are nowhere near we are we should be.

So again, those—I put those surveys in there for a purpose because again when you look at the economics we can discuss theory an incentives so on. When people are going out there and talking to small business owners, this is what they are hearing. Surely there will be exceptions along the way that think it is great or maybe their business growing so doesn't matter to them, that is fantastic.

I would argue the fact we had 2.2 percent growth with everything that has been working against entrepreneurship and investment is pretty amazing. And I think that is where the tipping hat to the resiliency of the American business owner and the workers absolutely.

Mr. LUETKEMEYER. I think your point is about the energy industry is probably where the growth has been. If it hadn't been for that, I think my numbers that I have seen would be a flat GDP. I think the 2.2 is actually as a result of energy industry that is going gang busters right now.

Mr. KEATING. A huge contribution without a doubt when you look at the GDP numbers and employment numbers without a doubt.

Mr. LUETKEMEYER. Just one point before we close here. Mr. Baker made the comment some time ago that the businesses did not make any sort of plans and did not make adjustments prior to 2000, and beginning of this year in 2013. And I can tell from you the businesses I have visited or when I go home on the weekends and have district court periods as well as people have come to my offices, when you talk to those folks they have been looking at this ever since it passed how they are going to comply.

They have talked with their attorneys, they have talked with their accountants, and many of them have made business decisions

on not expanding or not hiring additional folks based on this law for a number of years already. And so just because the numbers don't reflect it today, they already made those decisions in the last year, year before when they decided not to expand by new locations or not to expand existing location.

With that, Mr. Chairman, I thank you for the opportunity to be heard here today, and the timeliness of this hearing.

Chairman COLLINS. Thank you. At this point I would like to yield to Ms. Hahn.

Ms. HAHN. Thank you, Mr. Chairman. Actually I would like to ask Mr. Baker to respond to some of the comments that Mr. Keating made. But honestly, I really disagree with the comment that being an entrepreneur in this environment with the new Affordable Care Act is a negative. I think just the opposite, I think it is a positive. I think there are a lot of people that get stuck in a job they don't want to be in because of the health insurance that is provided them, and they are afraid, and their families are afraid for them to step out and be a entrepreneur.

And I think this law allows someone to strike out on their own and be able to afford quality health insurance without jeopardizing their family or themselves. So I look at it as a complete opposite of what you just said. I think it is a positive and I think there are resources now that people never had before, and there are a lot of people who stay with a job just for the health insurance, and really have that entrepreneurial spirit inside of them and have been afraid to do so specifically because of the inability to get health care on their own. I don't know, Mr. Baker, if you wanted to respond to some of those comments that Mr. Keating made.

Mr. BAKER. Yeah, well, in particular I would take up on that point there what is been a considerable amount of economic research showing exactly this idea of job lock that you have people that have a job with health insurance, either they or a family member has an existing condition, and they know if they had to go into the individual market, they would either not be able to get insurance at all, or it would be actually exorbitant.

And I actually was curious about this and clicked onto a few of the exchanges, the State exchanges, and looked at the oldest group 55 to 64 where you pay the highest premiums. And you can get the silver plans, middle plans for 600 a month, it varied by State and which plan you chose. But in other words, insurance that would consider very affordable, not counting any subsidy.

So if you are a more moderate income person, would you get a subsidy on top of that. I actually do own my own business, my own research center, but, you know, if I were thinking of starting that out today, it would make a big difference to me knowing that for whatever reason things went badly and I was not getting insurance through the center, I had the option of getting it through the exchange at an affordable rate. So I would be very surprised if you don't see burst of entrepreneurship in the next couple years.

Ms. HAHN. Thank you. That is what I think as well. And just to remind everybody the health care in this country was broken, and so this is really an attempt to fix what was terribly broken. And actually National 2008 study by small business majority said that small business health costs would more than double by 2018 with-

out any reform. So just to kind of remind everybody, health costs were going up, and it was a broken system. So this is an attempt to lower health costs and bring it down, but there are some issues that we are finding out today.

And just on the small business majority. I don't know if you have connected with them, Mr. Bienko and Mr. Hermann, but I have held several workshops on the Affordable Care Act with small businesses in my district, and the Small Business Majority and they have offices throughout the country are really a good resource. I felt your pain when you said you don't have the kind of resources to figure this law out, and it is confusing to some extent, but this is a good resource that—they are there for small businesses, they are champions of small business. And they are very good at helping kind of go through the maze of this new health care law, so you guys might check into them.

I guess for both of you sounds like you have different issues. Mr. Hermann, you sounded like you were saying you are taking care of your employees now. You are going to take care of them, they are like family. But it is more about your hesitance to hire more in the future.

Mr. Bienko, it sounded like for you, you are more concerned about having to offer health insurance for those who are working 30 hours or more. Have you actually calculated those costs of, you know, what it would mean to insure your full-time employees or those part-time employees that, you know, you talked about those that worked 3 days a week, sometimes 10 or 12 hours that would push them to the 36-hour limit?

Mr. BIENKO. Sure if I can first comment on the previous statement referenced the Affordable Care Act as a whole, our health care system is broken, there is no doubt about it and we need to make a change. But I think what we are addressing here today is around the 30-hour workweek, not so much the actual plan. And so for an individual like myself, we know, I want entrepreneurs to have the ability to be able to step out, it is just how it is done and how it is made. I don't think anybody is against individuals being able to have health coverage. I think as Americans, as people, as human beings, no matter what background you come from, you want everybody to be taken care of, and I feel the same exact way. However it may not be the best system for businesses entrepreneurs. I think today we are talking about the 30-hour workweek.

When it comes to us, we want nothing more than to provide the health care coverage, that is why we made the step from day one. First day I opened, I provided an opportunity for my very first employees from day one and made that investment, and we continue to make that investment. You made a comment on the cost, it will cost us $2,200 as we have set up per new employee on a part-time basis if it is not changed, reverted back to 40 hours. Now when we look at new locations——

Ms. HAHN. And how many is that for you? How many of those employees fall into that category?

Mr. BIENKO. Sure, when we open a new location, we open a new location with 12 to 13 part-time employees and one full-time employee. Those part-time employees work between 30 and 35 hours

a week when we ramp up a new location and new city. We march into a new city right away off the bat, we are providing the—30—15 new opportunities right away.

Ms. HAHN. And they are like 36, 35.

Mr. BIENKO. They are like 36 hours per week.

Ms. HAHN. Right now you don't consider them full-time.

Mr. BIENKO. No, they are not full-time. And they will grow into full-time positions and they will receive that benefit from working hard and helping us establish our business, but our business cannot be established if we do not profit. We need that margin, we need every single margin.

You talk about 1.6 margins, 5 percent margins, 15 percent margin, it doesn't matter what industry you are in and what margins you have based upon your industry, when you are a startup, you need every single percentage point.

Ms. HAHN. So if this doesn't get changed back to the traditional 40-hour workweek, what will you do?

Mr. BIENKO. We have that additional cost.

Ms. HAHN. You will have the additional cost, but you won't——

Mr. BIENKO. We will grow a lot slower. With our system and our model and our scale that we have set up currently that has worked tremendously. We went into Nashville, Tennessee, opened up a location there as a franchise. I went in there and I purchased a failing franchise. We grew by over 600 percent in one year with our model and our scale, we know what works. It doesn't work with the additional costs. When we moved into Dallas, Texas and we opened up in Dallas, Texas on December 16th, with that in mind. If this was, in fact, currently right now, those costs would prohibit us to grow upon the same scale that we know we are capable of growing upon. When we went into Nashville, we started out with three employees, we now have over 30 in 9 short months.

Ms. HAHN. Is that cost calculated on your current insurance provider, they have told you that adding more employees would be at that cost?

Mr. BIENKO. That is what I have to go on currently right now working with our insurance provider. So if we are offering it to the individuals that we are offering it to right now, we have to offer it to equally amongst the other employees and that is the cost burden that we have to take on a part-time basis. It is not an issue of not wanting to do it. It is an issue of the business will not grow and scale the same exact way without it.

Ms. HAHN. And Mr. Hermann, what is your biggest concern?

Mr. HERMANN. Biggest concern is go back to, we are taking care of our full-time employees right now. We did run the numbers and look back on past 4 weeks, and 30 hours could bring in about 10 more under the plan. And——

Ms. HAHN. What would that cost you?

Mr. HERMANN. That would cost me $36,000 a year at least. That is not including administration costs, not including——

Ms. HAHN. For 10 more?

Mr. HERMANN. For 10 more.

Ms. HAHN. I think he has a better plan.

Mr. HERMANN. And here we go, we talk about these plans, they are so diverse. We are talking apples and oranges here. To have

this conversation, and I am just concerned like I said—you talk about the budget office. That is still time I have to step out of the store, and go down there, when what happened to just shaking my uncle's hand who is an insurance agent and saying, thanks for getting us good coverage. I actually have to leave him now, I am leaving my uncle in the local insurance agency because they don't provide the plan that I think is going to best keep us in business.

So a local insurance agent he has his hands in the air, he sells this stuff and he says, I don't know what to do we don't have a plan for you, I am sorry. So I am concerned about that. That is a local guy that shops in my store, he has agents there, he has other agents there.

Ms. HAHN. I thought your current plan provided the benefits that the——

Mr. HERMANN. No, to stay competitive for our rates. When I look at our rates, his rates are going to go—we are going to go up 10 to 20 percent at least. So we had to do something to keep our insurance plan, to keep our costs in line. And as a small insurance agency, they didn't have the ability to look at their underwriters and see what options they have, they had to go with someone else who is innovative and do something else. It hurts the small business guy and it also drags you out of the office more, and spend a lot of time on this. We had health insurance and we still provide health insurance to our employees, to our families. But I have spent a lot of time on this.

I have taken time out of my schedule because I believe the 30-hour requirement can cause some issues, that is why I am here today to comment on those 30 hours and hopefully represent the independent supermarkets across the Nation and independent business owners and make a difference.

Ms. HAHN. Thank you. Well, I appreciate all the witness here today. I think we have all learned something.

Chairman COLLINS. Myself as well. I think we heard some divergent opinions. I think at some point, where do we agree, uncertainty is not good, uncertainty in any number of areas including surrounding our deficit and debts and where those are headed. The more entrepreneurs and small business owners have certainty, the more likely they are to invest.

And it is interesting too, I think we are getting consensus agreement in a bipartisan way that whether it is the 30-hour workweek, whether it is now the new definition of large business at 50 employees, or whether it is the medical device tax, or whether it is the health insurance tax, all of these revenue drivers that we are going to bring money the taxes into the government to pay for this huge expansion Medicaid.

In each and every case, there is bipartisan agreement, they are not good for the economy, whether it is 30 hours, 50 employees, health insurance tax medical, they are all bad for growth, which is why, to some, we would say why don't we delay this a year and let's get the economy growing a little bit more before we would ever take on things that there is bipartisan agreement. In fact, our cost in jobs, we don't have any jobs that we can afford to lose.

So I just would leave that out there, that as we move forward in these uncertain times the best thing we can do is all get in a

room. We can talk about this, we can talk about the negative impacts, how could we change something in order to deal with the negative impacts and yet understand the cost associated with that so that we can all have a little less uncertainty and clearly today, the exchanges aren't open, they are not working. My own staff can't get on to the exchange here in D.C., it is not open. Yet in a very short period of time, you have to put your employees in buckets to prepare for a year down the road.

Anyway I think those are all facts that would indicate we should delay, but that is just my opinion.

So again, thank you all for coming, your insight has been very valuable. I appreciate you taking time away from your business traveling here, and I can assure you that that this testimony is valuable to us.

So with that, I ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record. And seeing none, without objection, so ordered. The hearing is now adjourned.

[Whereupon, at 3:08 p.m., the subcommittee was adjourned.]

APPENDIX

SBE COUNCIL
Small Business & Entrepreneurship Council

"The Effects of the Health Law's Definitions of Full-Time Employee on Small Businesses"

Testimony by
Raymond J. Keating
Chief Economist
Small Business & Entrepreneurship Council

October 9, 2013

Before the
Committee on Small Business

Subcommittee on Health and Technology

United States House of Representatives

The Honorable Chris Collins, Chairman
The Honorable Janice Hahn, Ranking Member

Chairman Collins, thank you for hosting this important hearing today to examine the potential effects of the Patient Protection and Affordable Care Act's (ACA or ObamaCare) definition of 30 hours a week as full-time employment, and what this might mean for employment at small businesses. The Small Business & Entrepreneurship Council (SBE Council) is pleased to submit this testimony.

My name is Raymond Keating, and I am the chief economist for SBE Council, as well as serving as an adjunct professor in the Townsend Business School at Dowling College where I teach a variety of courses in the MBA program; a weekly newspaper columnist for *Long Island Business News;* and author of several books, with the latest being *Unleashing Small Business Through IP: Protecting Intellectual Property, Driving Entrepreneurship.*

SBE Council is a nonpartisan, nonprofit advocacy, research and training organization dedicated to protecting small business and promoting entrepreneurship. With nearly 100,000 members and 250,000 small business activists nationwide, SBE Council is engaged at the local, state, federal and international levels where we collaborate with elected officials, policy experts and business leaders on initiatives and policies that enhance competitiveness and improve the environment for business start-up and growth.

Economic and Employment Growth

It is important to consider the impact of the ACA—or ObamaCare—within the context of our poor performance in recent years regarding both economic and employment growth.

Real GDP growth during this recovery has averaged only 2.2 percent. That not only comes in far below the 3.4 percent average since 1950, but also compares miserably to the 4.5 percent average during periods of recovery/expansion. So, in effect, economic growth during this recovery has been running at roughly half of where it should be.

Why does this matter? Well, keep in mind that if the economy grows at an annual average rate of four percent a year, our standard of living double every 17.5 years, while if growth averages a mere two percent then it takes 35 years to double the standard of living. The U.S. should not be content with growth of roughly 2 percent a year. It hurts us today, and far into the future.

Meanwhile, on the employment front, the latest data told a story of continued under-performance. Consider several key points.

First, in August, the labor force fell by 312,000 compared to July. Throughout the recession and subsequent recovery, the labor force participation rate has rather steadily declined. The August level of 63.2 percent was the lowest since August 1978. That is, the worst labor force participation rate in 35 years. That speaks mainly to a large number of people simply not even bothering to look for work.

As for what's going on with actual employment, the federal government serves up employment data via two surveys. The establishment (or payroll) survey gets widely quoted in the media, and in August, nonfarm payrolls rose by 169,000. That's far below the 250,000 or so expected during a solid recovery.

But the other set of data, i.e., the household survey, is where we get the unemployment rate, and it also better captures start up and small business activity. Unfortunately, the reason that the unemployment rate declined in August to 7.3 percent from 7.4 percent in July was because a 115,000-drop in employment was outdistanced by the larger decline of 312,000 in the labor force.

To put this in perspective, if the U.S. had a labor force participation rate more in line with recent historical norms, the unemployment rate would be nearly 12 percent.

And what about the number of long-term unemployed? The number of people unemployed for more than 27 weeks came in at 4.3 million in August. That's down from the high of 6.6 million set in may 2010, but is nearly four times the May 2007 level of 1.1 million.

In summary, as of August, we were still down by about 2.4 million in terms of employment compared to the pre-recession level (November 2007).

Compared to the same point in the economic recovery of the 1980s, after the arguably worse economic period of January 1980 to November 1982, the U.S. had added 11.84 million jobs versus the 4.17 million added so far in the current recovery.

No matter how you measure it, the U.S. is suffering through one of the worse recoveries on record in terms of both economic growth and job creation.

Given the ObamaCare employer mandate and the definition of 30 hours a week as full-time employment, we also need to look at full-time versus part-time employment. It must be noted that as for people who are working part time, but want full-time work, in August, this group working part time for economic reasons registered 7.9 million. That's fortunately down from the peak of 9.2 million set in September 2010. However, it's far above pre-recession levels. In fact, it's more than double the 3.9 million level of April 2006.

(Keep in mind that the Bureau of Labor Statistics defines full-time employment as 35 hours a week, versus the ObamaCare *de facto* definition of full-time employment as being 30 hours per week.)

It is important to recognize that a dramatic shift has been going on in 2013 as to part-time versus full-time jobs being created. During this recovery, a bit more than 90 percent of jobs created have been full time. However, from January 2013 to August 2013, two-thirds of employment gains have come via part-time jobs.

So, job creation thus far in 2013 has been overwhelmingly about part time jobs, which is a striking break from what normally happens, and speaks to the issue of how part-time workers are treated under ObamaCare versus full-time.

Small Business Role in Job Creation

Of course, it needs to be pointed out that small and mid-sized businesses—that is, those with less than 500 workers—create the bulk of net new jobs in the economy. As the SBA's Office of Advo-

cacy sums up: "Small firms accounted for 64 percent of the net new jobs created between 1993 and 2011 (or 11.8 million of the 18.5 million net new jobs). Since the latest recession, from mid-2009 to 2011, small firms, led by the larger ones in the category (20–499 employees), accounted for 67 percent of the net new jobs."[1]

Given the importance of smaller businesses to job creation, we should all be concerned about recent declines in various measures of entrepreneurship.

For example, a good take on early stages of entrepreneurship is the number of self-employed. Unfortunately, the trend after 2006 has been very troubling. In terms of unincorporated self-employed, the recent high of 10.68 million (seasonally adjusted) was set in December 2006, and the numbers have been on a general decline since. In August, the level came in at 9.5 million, which showing no growth compared to a year earlier. The range over the past couple of years has been running at 25-to-27-year lows. Similarly, incorporated self-employed also has trended down, though more unevenly, since 2008.

And not surprisingly then, data on business births revealed a big decline from 2006 to 2009, with some growth in 2010 and 2011, but levels remaining far below just a few years earlier. As for the total number of businesses, unfortunately, the data from the U.S. Census Bureau has a long lag. According to the latest available information, though, the number of firms with employees declined for three straight years, dropping by 5.2 percent from 2007 to 2010.

The unmistakable and troubling trend in recent years has been a decline in the level of entrepreneurship in the U.S. That's worrisome for many reasons, including on the employment front.

For example, as reported by the September 5 *Wall Street Journal,* small business job creation activity lags: "According to ADP numbers, payrolls at private firms with less than 50 employees have increased 4.7% since the end of the recession through August, medium-size firms (50–499 employees) are up 6.1% and large firms (more than 1,000 workers) have increased payrolls by 7.4%."

A similar finding was offered by Intuit's small business employment index, released on September 4. Economist Susan Woodward noted that small business job growth has been flat for two months now. Over the long run, Woodward observed, "Small business employment continues to lag behind total private employment, which has risen 7 percent since the trough in March 2010, while small business employment has only risen by 2 percent."

Small Business Outlook and Incentives Under ObamaCare

A new survey of small business owners by TechnoMetrica Market Intelligence done for the Small Business & Entrepreneurship Council found the following regarding ObamaCare and its impact on hiring decisions by small businesses:

[1] Office of Advocacy, Small Business Administration, "Frequently Asked Questions About Small Business," September 2012.

• "Over three-quarters of small businesses (76%) said they were not likely to hire over the next six months."

• Among those likely to hire in the coming six months, 57% said they would likely hire full-time workers (28% very likely, 29% somewhat likely), and 77% said they would likely hire part-time workers (36% very likely, 41% somewhat likely).

• One third of small business owners said that ObamaCare has had an effect on their hiring decisions, including 21 percent saying it has had a "major" impact. Those businesses that said ObamaCare has had an impact on hiring decisions are largely firms with actual employees, versus sole-proprietorships.

• "Most small businesses (63%) do not believe that ObamaCare will help businesses like them to purchase more affordable health insurance for them and their employees. More than half (52%) strongly disagree with the idea that it would help them obtain affordable health insurance." 12% of businesses are not yet sure.

Earlier this year, a Gallup poll put a variety of questions to small business owners as to the impact of ObamaCare on their enterprises.[2] Consider the following results:

• 48% of U.S. small business owners said that the 2010 Affordable Care Act would be bad for their businesses, versus 39% anticipating no impact and only 9% saying it would be good.

• "55% of small-business owners expect the money they pay for healthcare to increase. Five percent expect their healthcare costs to decline, while 37% say the health law will have no impact on what they pay for healthcare."

• "When asked if they had taken any of five specific actions in response to the ACA, 41% of small-business owners say they have held off on hiring new employees and 38% have pulled back on plans to grow their business. One in five (19%) have reduced their number of employees and essentially the same number (18%) have cut employee hours in response to the healthcare law. One in four owners (24%) have thought about eliminating healthcare coverage for their employees."

In August, the International Foundation of Employee Benefits Plans also released a survey on the impact of the ACA.[3] Among its findings were the following regarding small businesses:

• 95.1% of businesses with 50 or fewer employees expected costs to increase due to the ACA, with 51.2% expecting cost increases of more than 10 percent.

• Among all businesses, the ACA provision cited most often (by 21.2%) as having the most significant impact in boosting

[2] Dennis Jacobe, "Half of U.S. Small Businesses Think Health Law Bad for Them," Gallup Economy, May 10, 2013, accessed at http://ww.gallup.com/poll/162386/half-small-businesses-think-health-law-bad.aspx.

[3] International Foundation of Employee Benefits Plan, "2013 Employer-Sponsored Health Care: ACA's Impact," accessed at http://www.ifebp.org/pdf/research/2103ACAImpactSurvey.pdf.

costs was “Offering affordable coverage to all employees working an average of 30 hours or more a week in a month.”

- As for workforce adjustments due to the ACA, among firms with 50 or fewer employees, 19.5% (11.3% already having done so and 8.2% planning to do so in the coming 12 months) said they are reducing “hiring to get/stay under the 50-employee ACA threshold for small employers.”

- Also in terms of workforce adjustment responses, among firms with 50 or fewer employees, again, 19.5% (11.3% already having done so and 8.2% planning to do so in the coming 12 months) said they are “adjusting hours so fewer employees qualify for full-time employee medical insurance requirement.”

Assorted media reports also have highlighted the threat of per-full-time-employee (or FTE) fines under ObamaCare leading to businesses cutting employee hours. A September 11 Fox Business News story noted the following: “The Obama administration announced in July that it would delay the so-called employer mandate until 2015. ObamaCare requires that companies with 50 or more employees provide health insurance benefits to very full-time workers, considered to be anyone who logs an average of 30 or more hours a week. Employers will be hit with a penalty for each full-time employee who isn’t covered and instead purchases insurance through a federally subsidized exchange. Although the administration delayed implementing the rule until 2015, the penalties for that year will be based on staffing levels recorded in the second half of 2014 at the latest. As a result, several large companies and a long list of smaller businesses have changed their policies to cap weekly hours at 29.”[4]

And regarding the high level of part-time jobs, a Reuters report recently highlighted the ObamaCare role on the part-time jobs front: “Faltering economic growth at home and abroad and concern that President Barack Obama’s signature health care law will drive up business costs are behind the wariness about taking on full-time staff, executives at staffing and payroll firms say ... Executives at several staffing firms told Reuters that the law, which requires employers with 50 or more full-time workers to provide healthcare coverage or incur penalties, was a frequently cited factor in requests for part-time workers. A decision to delay the mandate until 2015 has not made much of a difference in hiring decisions, they added.” Later, it was noted: “Obamacare appears to be having the most impact on hiring decisions by small- and medium-sized businesses. Although small businesses account for a smaller share of the jobs in the economy, they are an important source of new employment. Some businesses are holding their headcount below 50 and others are cutting back the work week to under 30 hours to

[4] Matthew Rocco, “With Eye on ObamaCare, Companies Move to Cut Workers’ Hours,” FoxBusiness.com, September 11, 2013, accessed at http://www.foxbusiness.com/industries/2013/09/11/with-eye-on-obamacare-companies-move-to-cut-workers-hours/.

avoid providing health insurance for employees, according to the staffing and payroll executives."[5]

In addition, as health insurance costs continue to rise, including with increased regulations and taxes via ObamaCare, it must be noted that business owners with more than 50 workers have every reason to calculate whether it makes sense to continue offering coverage, or drop it and pay the panty.

For good measure, firms with less than 50 workers now have an added incentive to drop coverage, perhaps provide a far cheaper lump sum payment to workers, and let employees then seek government subsidies and coverage via the insurance exchanges. All of this means more government subsidies, and an ever-growing tab for taxpayers, including, of course, small business owners.

Conclusion

In a time of slow economic growth, lackluster job creation, and troubling trends on entrepreneurship, policymaking should be focused on how to incentivize private-sector risk taking, that is, starting up, expanding and investing in businesses. That would mean, for example, providing broad and substantive tax and regulatory relief.

Unfortunately, policymaking has been pointed in the exact opposite direction for a number of years now. In fact, an assortment of public policy measures—with ObamaCare's mandates, regulations and tax increases being prominent—explicitly raise costs and create uncertainty for entrepreneurs, businesses and investors.

So, at a time when we desperately need the entrepreneurial sector of our economy to be focused on investing and creating good-paying jobs, ObamaCare forces businesses to be focused on how to deal with a massive government intrusion on the employee cost front.

And when doing so, ObamaCare provides clear incentives to hire part-time over full-time workers if possible; reduce employee hours (getting them under the 30-hour mark); maintain staff levels at less than or cut back to below 50 full-time or FTE workers to avoid the employer-mandate; and seriously consider dropping coverage altogether given the relative costs of providing, or not providing coverage.

The recent numbers on hiring and in various surveys confirm that the costs and incentives under ObamaCare push many small and mid-size businesses towards hiring fewer workers, especially fewer full-time workers, and reducing employee hours. In the end, it's clear that ObamaCare serves as a very real drag on economic and employment growth.

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[5] Lucia Mutikani, "Analysis: Obamacare, tepid U.S. growth fuel part-time hiring," Reuters, August 21, 2013, accessed at http://www.reuters.com/article/2013/08/21/us-usa-economy-jobs-analysis-idUSBRE97K05K20130821.

"The Effects of the Health Law's Definitions of Full-Time Employee on Small Businesses"

Testimony of

Steven Hermann

Vice President

Paul's Supermarkets

On Behalf of

The National Grocers Association

Before

U.S. House of Representatives

Committee on Small Business

Subcommittee on Health and Technology

Washington, D.C.

October 9, 2013

Good Morning Chairman Collins and members of the Subcommittee. Thank you for that kind introduction and for the opportunity to testify on behalf of the National Grocers Association on an issue that is very important to independent grocers and small businesses across the country. NGA is the national trade association representing the retailers and wholesalers that comprise the independent channel of the supermarket industry. Independent grocers account for approximately one quarter of the total US supermarket industry with nearly $130 billion in total sales, and over 944,000 in direct jobs that pay over $30 billion in wages.

My name is Steven Hermann and I am the Vice President of Paul's Supermarkets. Our family-owned company has been in business in Eldon, Missouri, for over 45 years. I started working in my family's supermarket when I was 14 years old, learning the trade from my grandfather and father. Like many independent grocers, I fell in love with the business early on and quickly gained an appreciation for hard work and customer service. Today my family operates three supermarkets with locations in Eldon, Osage Beach, and Lake Ozark, Missour,

Like many small employers across the country, we have weathered many economic storms throughout the years and are proud that we have never lost sight of the two most important things for our business: our employees and our customers. However, we are facing a challenge in our workforce unlike any we have seen before. I am fearful that the unintended consequences of the Affordable Care Act (ACA) will hurt our employees and undermine our values as a family owned small business. Under the ACA, the definition of full time employee has created new barriers for our industry where working an average of 30 hours per week is simply not considered full-time.

Independent grocers are proud to provide employment to hundreds of thousands of individuals, many of whom are working a second job or simply looking to help supplement their family's income. As such, the supermarket industry employs a large number of part-time workers to help meet the ever changing needs and demands of our customers, which can change from day to day. The ACA created new hurdles for businesses by greatly expanding the number of employees eligible for health plans by defining a full-time employee as an employee who has averaged at least 30 hours of service per week over the course of a month.

This new definition of full-time under the law will force small businesses to re-think how they hire and schedule part-time employees. Where an employer may have previously hired a new part-time employee with the exception that they would work 33–35 hours per week, that employee will now be brought on knowing they are a part-time employee and their work week will be limited to less than 30 hours per week. Employers are likely to hire fewer employees, especially full-time employees, learning to do more with fewer workers in order to control costs.

Not only is the law redefining what it means to be a full-time worker in this country, but it's permanently changing the American workforce by interfering with part-time workers' ability to earn a

living. Part-time employees in need of additional money may no longer be able to pick up an additional shift to pay for unexpected expenditures or earn extra money around the holidays.

We employ a large number of part-time associates, many during our busy summer season, but also others that help staff our stores throughout the year. These part-time workers include kids working while attending college, spouses helping to supplement their family's main income, and older associates supplementing their retirement. Unfortunately, due to the law, many businesses may now be unable to provide part-time associates with the hours they need.

We have long felt that our associates are like our family, which is why we are proud to offer a wide range of great benefits to our full-time associates, including funding 100 percent of the associate's healthcare premium after the deductible is met. Our associates have access to a Health Savings Account and the company contributes a small monthly stipend toward that account. Today, we currently employ 75 full-time associates and 100 part-time and seasonable workers between our three stores. We are proud of the fact that nearly all of our full-time associates participate in our health plan and it's our hope that we can continue to provide quality benefits in the future, although it gets more and more difficult to do so with each passing year.

This commitment to our associates is not without significant costs, especially for a small family—owned business such as mine. Over the years, as health care costs have increased we have worked hard to maintain the benefits we offer, including adapting our health plans to meet the changing times and employees needs. In this year alone, healthcare costs for my company exceeded $300,000, not including any in-house administration costs, and we are on track for a significant increase again next year. The supermarket industry operates on razor thin profit margins, which was confirmed again in the 2013 NGA Financial Survey, where net profit before taxes among independent grocers hovered around 1.65%. In this competitive industry pennies really do count and can make the difference between making a profit or not.

According to the same NGA Financial Survey, 92 percent of respondents indicated they currently offer health benefits to their full-time employees, which is a testament to the commitment that independent grocers have to their associates. Employers, such as myself, very much want to continue providing quality benefits to our full-time employees, recognizing that a healthy employee is a productive employee. However, many businesses simply cannot afford to provide coverage to workers who average 30 hours per week. Thus, small business owners will have to make tough choices and many part-time employees will face reduced hours and smaller paychecks.

Independent grocers need the flexibility to be able to manage their businesses and workforces to meet the needs and demands of their customers. The burdens placed on our businesses by this law hamper our ability to do just that and make it more difficult to succeed in a hypercompetitive marketplace. Paul's Supermarket prides itself on supporting charitable organizations and community

groups; however pressures from the healthcare law could impact our ability to continue that support that the same level. My strong recommendation to you today is that Congress should do all it can to help businesses by removing barriers or any artificial thresholds that will inhibit our ability to hire workers and create good jobs. One of the most effective ways for Congress to do just that is to pass legislation that amends the unrealistic definition of a full-time employee under the healthcare law so that businesses can focus on continuing to be an employer of choice in the communities we serve.

Thank you for the opportunity to appear before the Committee today and I look forward to answering any questions you may have.

TESTIMONY OF STEPHEN BIENKO

PRESIDENT, 42 Holdings LLC

Before the

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON HEALTH AND TECHNOLOGY

"The Effectives of the Health Law's Definitions of Full-Time Employee on Small Business"

OCTOBER 9, 2013

Introduction

Chairman Collins, Ranking Member Hahn, and members of the Subcommittee, thank you for inviting me to testify today on the effects of the health care law's new definition of a full-time employee on a small business. My name is Stephen Bienko, and I am the President of 42 Holdings, and a member of the International Franchise Association. I own and operate an interstate and intrastate moving company, and I also own 15 franchises of College Hunks Hauling Junk and College Hunks Moving throughout northern New Jersey, as well as in the Nashville, Tennessee and Cleveland, Ohio areas. College Hunks Moving and College Hunks Hauling Junk offer residential household moves, office relocations, junk removal, donation pickups and moving labor services. I bought my first franchise three years ago in 2010 after a career as an entrepreneur and a previous stint as a New Jersey State Trooper. I'm proud of my business; it offers a service that my communities need, and flexible, secure jobs for dozens of motivated team members in three states.

As a franchise small business owner, my livelihood and my ability to provide for my team members is directly linked to the strength of the economy and federal policies enacted by Congress. Most recently, I have been studying the ways the expansive Affordable Care Act will impact my business, our team members and the company culture that supports all of it. While the one-year delay of the employer mandate gives us more time to properly implement the law, one thing remains clear: while well-intentioned, the Affordable Care Act poses a serious threat to my business' ability to continue providing a fun, enthusiastic work atmosphere and quality jobs for people who want and need them.

The Definition of "Full-Time Employee"

For decades, U.S. employers have used a 40-hour workweek as a standard for workforce culture. Unfortunately, the Affordable Care Act's provision requiring employers to provide coverage to

full-time employees, and defining full-time as 30 hours, will cause many employers—like me—to simply alter their employees' hours in order to run a successful small business. This puts all of us at a loss; employers must implement new workforce management methods, and some team members will receive fewer hours and reduced take-home pay, not to mention they will *still* be ineligible for employer-sponsored health coverage.

I currently have 72 employees, and 20 of those employees are part-time workers. In 2014, we are planning on adding an additional 34 part-time workers across all of my locations. Many of these part-time employees work three days per week, with 10–12 hour daily shifts. These part-time workers are attracted to our company culture because the positions offered can easily fit with their schedules, whether that includes school, childcare coverage, or other personal commitments. During "move season," what our industry considers the "busy period," we typically have a large number of customers who are trying to schedule their family's move. Many of my part-time team members will try to fit in as many as five of these shifts in order to make additional income for themselves, and in many cases, their families. Currently, it is not uncommon for a part-time team member who normally works 25–30 hours per week to double their work hours to 50–60 per week during these periods of high demand.

I currently offer a health plan to our full-time team members, but in order to manage my health care costs (which are a company benefit and a line item on a Profit & Loss sheet), I will need to limit the hours worked by our part-time team members. The simplest way to accomplish this is to limit part-time workers to only two full shifts per week. This will equal between 20 and 24 hours per week, instead of the 30–36 hours they are working now. These part-time workers will no longer be permitted to pick up extra shifts and garner additional income during high-volume "move seasons."

Reduced Hiring and Expansion

I have offered my full-time team members health coverage even without the employer mandate, and I have every intention of continuing that coverage, even as I continue to expand my business. However, the increased cost of doing business by providing coverage to employees with fluctuating schedules that only occasionally put them into full-time status will leave me no choice but to scale back my expansion plans. I consider myself lucky, because I have succeeded with an ambitious growth plan for my business over the last several years, but many small business owners are not so fortunate. Not only has the employer mandate discouraged job creation and business expansion, it has also damaged existing jobs by including a misguided statutory requirement that discarded more than a half-century of established labor policy by now defining "full-time" as 30 hours per week.

The employer mandate will hurt franchise business workers in many ways, but one of the most devastating effects of the mandate is that fewer workers will be offered health insurance, and employ-

ees will be less able to afford their own coverage when working fewer hours. The true losers under this misguided mandate are the employees, who work day-in and day-out to provide a better life for themselves and their families.

Allowing employers to manage their workers to the traditional 40-hour work week would give employees more flexibility and eliminate the need to revamp longstanding employer personnel policies. For my part, I would be able to give my part-time employees more hours and pay them more wages, without incurring the additional cost of providing health coverage that true part-time employees are currently not eligible for.

Conclusion

Without a doubt, the one-year delay of the employer mandate is an important reprieve for franchise small businesses as they prepare for ACA implementation; unfortunately, it is a short-lived solution and is far from workable in the long run. Many franchise businesses are being turned upside-down by the new costs, complexities and requirements of the law. Allowing employers to continue with the current and traditional workforce management practices provides more personal stability in a period of continued economic uncertainty and recovery. So far, Congress has seemingly been willing to listen to testimony from small business owners about these serious challenges, but fast-approaching deadlines command your swift action to assist our nation's franchise small businesses. Business owners are already weighed down by complex reporting requirements, small business health exchanges that lack competitive options, and increased costs brought on by additional taxes and fees. The 30-hour definition is a major change that could have far reaching consequences we have not yet begun to see.

I urge the Committee to support H.R. 2575, the Save American Workers Act, and H.R. 2988, the Forty Hours Is Full Time Act to help ease the employer mandate's enormous burden on franchise small businesses. The revision of the new definition of the full-time employee for the purposes of the Affordable Care Act is a commonsense solution that will put the ACA in line with many other federal wage and hour regulations, provide small business owners such as myself with health benefit consistency, and allow for increased hours and more take-home pay for my hard-working and deserving team members.

Thank you for allowing me to testify before you today, and I look forward to answering any questions you might have.

Testimony of

Dean Baker, Co-Director

Center for Economic and Policy Research

Before the

Small Business Subcommittee on Health and Technology of the U.S. House Committee on Small Business

Hearing on

The Effects of the Health Law's Definitions of Full-Time Employee on Small Businesses

October 9, 2013

I want to thank Chairman Collins and Ranking Member Hahn for giving me the opportunity to address the subcommittee. I will use this opportunity to discuss work that I did with my colleague at the Center for Economic and Policy Research, Helene Jorgenson, examining the extent to which the Affordable Care Act (ACA) may have lead to more part-time employment as employers cut work hours in order to avoid the employer sanctions in the law.[1]

The ACA includes a provision that requires employers of 50 or more full-time workers (those working at least 30 hours per week on average) to either provide affordable insurance coverage directly to workers, as defined in the law, or to pay a penalty for each full-time worker who is not covered and subsequently buys subsidized insurance in the health care exchanges. There are two obvious ways to avoid this penalty.

The first route would be to keep the total number of workers under 50, either by not hiring workers for businesses near the cutoff or shedding workers for businesses just over the cutoff. The second route would be to reduce the number of hours that employees work so that they fall under the 30 hour a week average that would have them count towards the firm's penalty under the ACA.

There are good reasons for questioning the extent to which the employer penalty provisions in the ACA would affect employment. Most importantly, the overwhelming majority of firms that employ at least 50 already provide health insurance coverage to their workers that would meet the standards of the ACA. According to a survey by the Kaiser Family Foundation more than 94 percent of firms that exceed the ACA's 50 workers cutoff already provided coverage to their workers voluntarily.[2] Clearly these firms consider it a good practice to offer a valuable benefit to their workers or they would not do so. Since most firms in this category already pro-

[1] Helene Jorgensen is also my wife.

[2] The Kaiser Family Foundation and Health Research & Educational Trust. 2012. "Section 2: Health Benefit Offer Rates" in *2012 Employer Health Benefits Survey,* 33–46. Menlo Park, CA: The Kaiser Family Foundation. http://kff.org/report-section/ehbs-2012-section-2/

vide coverage voluntarily, it is difficult to believe that requiring the remaining firms to provide coverage or pay a penalty would create such an onerous burden.

Furthermore, the penalty for not providing insurance of $2,000 per worker (excluding the first 30 workers), is relatively modest. If the pay of full-time workers averaged just $10 an hour, this would be an increase in annual compensation of less than 10 percent. A considerable amount of research has found no measurable employment impact from considerably larger increases in the minimum wage.[3]

For these reasons it seems unlikely that the ACA would have a large negative impact on employment. However, there have been numerous accounts of employers claiming to reduce employment or adjust hours in order to avoid the requirements and penalties in the ACA. If this is the case, we should have first begun to see evidence of the impact of ACA in January of 2013, since under the original law employment in 2013 would serve as the basis for assessing penalties in 2014. (The Obama administration announced on July 2, 2013 that it would not enforce sanctions in 2014 based on 2013 employment, but employers would not have known that sanctions would not be enforced prior to this date. Therefore we can assume that they would have behaved as though they expected to be subject to the sanctions.)

Some employers claim to have reduced employment because of the provisions of the ACA as soon as its passage in 2010, and many have blamed the ACA for the slow pace of employment growth in the years from 2010–2012. This is not plausible. There is enormous churning in the labor market, with close to 3 percent of employees leaving their job every month (half voluntarily and half involuntarily).[4] If an employer felt the need to hire additional employers in 2010–2012 to meet the demand for labor they were seeing at the time, they would have no difficulty getting their employment. Just the normal churning in the labor market would bring a firm with 52 or 53 employees below the 50 employee threshold in a few months. Since employers generally have the option to dismiss workers at will (unless they have a union contract), there is no reason that they could not have added employees in the years prior to 2013 to meet their demand for labor at the time, and then reduce employment in 2013 to avoid the ACA penalties.

Evidence from 2013

It is too early to assess the claim that employers are staying just below the 50 employee limit since we do not yet have data available on employment by firm size in 2013. However as a practical matter it is implausible that the behavior of these firms could have any noticeable effect on employment growth. It is unlikely that more than 1 percent of potential employment growth would be in firms that are near this cutoff. Furthermore, most of these firms

[3] Schmitt, John. 2013. "Why Does the Minimum Wage Have No Discernible Effect on Employment?" Washington, DC: Center for Economic and Policy Research. http://www.cepr.net/index.php/publications/reports/why-does-the-minimum-wage-have-no-discernible-effect-on-employment

[4] The Kaiser Family Foundation and Health Research & Educational Trust, op. cit.

would already be providing health care insurance for their employees and therefore need not be concerned about the sanctions in the ACA. If some number of firms actually are limiting or reducing employment to stay below the 50 worker cutoff then the impact would be too small to be noticed in the economy as a whole.

The alternative course of evading ACA penalties, reducing average hours of work below 30 per week, could at least plausibly have an impact on employment patterns. In fact, several large employers have claimed that they would deliberately keep workers' hours below 30 hours per week in order to avoid having them count toward the number for whom they would have a $2,000 penalty.

It is possible to test whether employers are actually reducing hours below the 30-hour threshold. The Current Population Survey (CPS) provides monthly data on workers usual weekly hours. We used the CPS to compare the first six month of 2013 with the first six months of 2012. Our original focus has been on the group of workers who reported working 26–29 hours a week. We considered this range a reasonable cutoff for an ACA effect. Presumably if an employer would have a worker put in more than 30 hours a week in the absence of ACA penalties, they would require a worker to put in close to, but less than, 30 hours in order to avoid the penalties.

In an analysis done on the first four months of data from 2013 we found a modest drop in the percentage of workers who worked this number of hours compared with the corresponding months of 2012.[5] This suggested that concern over the employer sanctions in the ACA was leading firms to reduce work hours below the 30 hour cutoff.

We repeated the analysis after the July data became available, giving us all six months for which employers might have acted on the belief that they would be subject to the ACA's sanctions based on 2013 employment levels. With the full six months of data we instead found a modest increase in the percentage of workers who are putting in 26–29 hours. The share went up from 0.61 percent of the workforce in 2012 to 0.64 percent of the workforce in 2013, an increase that corresponds to slightly more than 40,000 workers who have work schedules that put them just below the threshold as shown in the table below.

[5] Jorgenson, Helene and Dean Baker, 2013. "The Affordable Care Act: A Hidden Jobs Killer?" Washington, DC: Center for Economic and Policy Research. http://www.cepr.net/index.php/publications/reports/the-affordable-care-act-a-hidden-jobs-killer.

Ususal weekly hours in primary job	Percent of works in	
	2012	2013
0	0.07	0.07
1 to 19	8.97	8.69
20 to 24	1.39	1.37
25	1.78	1.81
26 to 29	0.61	0.64
30	3.03	3.12
31 to 34	1.78	1.79
35 or more	75.37	75.79
varied	7.01	6.74

Source: Author's analysis of Current Population Survey.

This may look like it is confirming exactly what opponents of the ACA warned against, that employers are responding to the threat of sanctions and cutting back workers' hours, exactly as several prominent business owners had promised they would do.

However a closer examination shows that the data don't support this story. The percentage of workers putting in 25–29 hours is up, but so is the percentage of the workforce that puts in 35 hours a week or more. In fact, the share of the workforce that reports working just over the limit, either at 30 hours a week or 31–34 hours a week, is up also.

It turns out that the big declines are in the percentage of workers who put in 1–19 hours a week, 20–24 hours a week, or who report that their hours typically vary. The data indicate that fewer workers are in these low or "hours varied" categories and more workers report falling into all the categories at 25 hours a week or above.

These changes are all small and mostly not statistically significant. They also reflect the influence of many factors other than the ACA. But the data certainly provide no evidence supporting the claim that the shortening of workweeks has been a widespread phenomenon.

Just to be clear, it is likely that the 30-hour sanction cutoff will have a modest but measurable effect on hours through time as employers adjust schedules and new businesses open.[6] And any movement away from employer-based insurance will eliminate an important overhead cost that discouraged firms from shortening hours and hiring more workers.

There are three points that should be kept in mind about any possible movement to shorter hours that may result from the ACA. First, the vast majority of people who work part-time do so voluntarily. In many cases they have family or other obligations that make part-time employment desirable. Even with the current weak labor market more than two-thirds of the people who work part-

[6] An analysis of the impact of Hawaii's employer mandate, which first took effect in the early 1980s, found that it led to an increase of 3.7 percentage points in the share of workers in the bottom wage quintile who worked less than the 20 hour a week threshold specified in the state's law (Buchmueller, Thomas C., John DiNardo, and Robert G. Valletta. 2009. "The Effect of an Employer Health Insurance Mandate on Health Insurance Coverage and the Demand for Labor: Evidence from Hawaii." FRBSF Working Paper 2009–08, April). This implies an increase in the percentage of the whole work force working less than 20 hours of 0.74 percentage points.

time report that they do so voluntarily. In more normal times this share would typically be close to 80 percent.

Second, the United States is an outlier in that workers put in far more hours each year on average than they do in other wealthy countries. One of the factors that has prevented the same sort of decline in the length of the average work year that we have seen in other countries is that health insurance is typically seen as an overhead cost by employers. Typically they pay the same amount for workers' health insurance regardless of how many hours they work.[7] This gives employers an incentive to get more hours from each worker instead of hiring more workers. Insofar as the ACA leads to a movement away from employer provided insurance, it will take away one of the factors leading to longer work hours. The result is that employers may more often decide to hire more workers at fewer hours per worker than would have been the case in the absence of the ACA.

Finally, the impact of the ACA's sanctions is only likely to be seen over time. It is very disruptive to a workplace to overhaul work schedules, especially if workers see the goal as being to deny them a benefit that they would otherwise receive. For this reason, it is not likely that many employers would restructure work hours immediately after the ACA employer sanctions took effect. However over a longer term, new businesses are established and employers do periodically redo business plans, including restructuring of work hours. It would stand to reason that when employers have the option of having a worker put in a number of hours that is just over the cutoff for sanctions or just under the cutoff, they will opt in many cases to give workers a schedule that has them put in just under the cutoff.

In this respect, it is worth noting that the analysis of the impact of Hawaii's employer sanctions for firms not providing coverage[8] found no effect on the percentage of workers employed at less than the 20 hours cutoff for the period 1992–1993, more than ten years after the law had been in effect. The impact only appeared in an analysis of work patterns for the years 2002–2005; more than twenty years after the law had been in effect. Based on the findings of this analysis of Hawaii's law, any possible effect of the ACA's employer sanctions will not be large enough to be picked up in the data for many years into the future.

Conclusion

The employer sanctions in the ACA do provide a modest incentive for employers to reduce work hours below the 30 hour cutoff in the law. However, research suggests that the size of the sanction is relatively modest compared to other interventions, like the minimum wage, which have generally been found to have little or no effect on employment. Our analysis of hours data from the Current Population Survey for the first six months of 2013 actually finds a small increase in the percentage of workers who usually work

[7] Some employers do make contributions to health insurance policies based on the numbers of hours worked, but this practice is still the exception.

[8] Buchmeulller et al., op. cit.

more than the 30 hour cutoff. This suggests that the number of employers who may have actually cut hours to avoid the sanctions is too small to have a noticeable impact on the labor market.

HOMECARE & HOSPICE
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STATEMENT SUBMITTED BY

THE NATIONAL ASSOCIATION FOR HOME CARE & HOSPICE

TO THE

HOUSE SMALL BUSINESS SUBCOMMITTEE ON

HEALTH AND TECHONOLOGY

OCTOBER 9, 2013

The National Association for Home Care & Hospice (NAHC) is the leading association representing the interests of the home care and hospice community since 1982. Our members are providers of all sizes and types from the small, rural home health agencies to the large national companies, including government-based providers, nonprofit voluntary home health agencies and hospices, privately-owned companies, and public corporations. NAHC has worked constructively and productively with Congress and the regulators for three decades, offering useful solutions to strengthen the home health and hospice programs.

As the House Small Business Subcommittee on Health and Technology examines the effects of the Affordable Care Act (ACA) definition of full time employee on small businesses, NAHC appreciates this opportunity to provide our views. The great majority of the estimated 25,000 home care agencies are small businesses. While many of these agencies employ more than 50 workers, the vast majority are considered small businesses under the SBA threshold. All told, there are over 2 million persons employed in home care. These home care agencies are innovative job creators that provide much needed compassionate, high quality care to elderly and disabled individuals in their homes and communities. The Department of Labor forecasts that home care workers are among the largest area of growth in employment today and in the decade to come. Our economy is built on millions of small enterprises like these. We should be doing all we can to promote policies to help them survive and thrive.

Currently the provision in the ACA that imposes penalties on employers with more than 50 full-time equivalent employees for not providing health insurance for their "full time" workers defines an employee working just 30 hours a week as full time. This definition of full time is entirely out-of-keeping with standard employment practices across the country.

The majority of personal care home care workers do not receive employee health insurance because home care agencies have three problems that are fairly unique: reliance on government programs such as Medicaid where payment rates as low as $11 an hour won't cover the increased costs of providing health insurance; consumers of private pay home care that are often elderly and disabled with fixed low incomes; and a home care workforce with widely varying work hours primarily to accommodate the needs of their infirm clientele.

Home care agencies that are unable to provide health insurance or absorb the ACA penalties will have to restrict their employees to no more than 29 hours per week to ensure their workers are considered part-time under the ACA. A survey that NAHC conducted earlier this year showed two-thirds of the private pay home care companies and three-quarters of the Medicaid home care companies are expecting to reduce working hours of staff to avoid the penalties. Millions of home care workers could find their hours, and thus their earnings, are cut back at a time when many of them are already struggling.

A good example of what we are talking about is a small home care agency, Health Force, located just outside of Buffalo that serves Chairman Collins' district. HealthForce employs more than 50 workers, but is revenue puts it well below the small business threshold. The following is a message we received from its CEO.

"I am Patricia M. Krall-Dwyer. I am CEO of a small woman-owned business called Health Force. We opened this family owned, licensed home care agency in 1985 to assist and empower the elder and disabled communities throughout western New York. Many of our clients would be confined to a nursing home without our assistance.

“Health Force is located in Cheektowaga, NY, a suburb of Buffalo. Our services include nursing, physical therapy, home health aides, and companion care. A predominant majority of the populations that we serve receive their care through government funded programs. Thus, our organization is continually required to implement and comply with the significant rule and regulation changes and additions over the past 36 months while balancing complying with these requirements with cuts to our firm’s reimbursement rates.

“Our small family business is built on the mission of empowering these communities to age in the residence that they choose and matching the best people to care for them. Being a smaller provider allows us to provide a personal touch that our clients need from such an intimate personal service. Our elderly and disabled clients get lost in the maze of many of the large institutional care companies. Clients that have no advocate for themselves need the small agencies to be there to “hold their hand” through the trials and tribulations of living a life with decreased mobility or mental capacity. We help them with the everyday tasks you and I take for granted. The current pace of additional Federal and State unfunded regulatory mandates are placing family run organizations like ours at risk of being eliminated while rewarding large conglomerate organizations.

“With the pending onset of this legislation already creating massive expenditures not just in the cost of health insurance but also the additional employees needed to comply with the numerous mandates contained within the Affordable Care Act. In particular, the mandate of 30 hours being defined as full time sets the stage for disaster. Health Force doesn’t sell shoes or serve food, our product is people who take care of people. So our small business will meet the 50 (FTE) requirements for the provision of affordable health care coverage.

“Due to the continuing cuts to our reimbursement rates our agency has to remain very lean administratively to continue to operate in this current environment. Increasing the hourly requirement to 40 hours to be considered a full time employee will accomplish a number of benefits and allow for the spirit of the Affordable Care Act to be implemented. By using a 40 hour work week to define full time, our organization would be able to comply with the mandate without having to add an additional FTE to enforce compliance and would incent our team members to increase their hours to access affordable coverage instead of reducing hours to avoid it. Implementing this change could reduce our costs by nearly **40%.** We do not have other departments to help us absorb the costs of tracking, monitoring, yet another individual mandate. We track our employees for 40 hours for overtime. We track our employees for 40 hours of vacation. This mandate of 30 hours will mean a massive IT overhaul and redevelopment of compliance processes. Most small agencies do not have an IT department; it’s us on the Internet trying to figure out how to adjust our computers.

“It truly is small businesses that run this country. During the last economic period, it was small businesses that added jobs. It

was small business that increased economic growth. I ask that Congress please not add us to the endangered species list."

During consideration of the Senate Budget Resolution, the Senate adopted an amendment calling for legislation setting a more sensible definition of a "full time" employee for purposes of the ACA employer obligations and penalties. The amendment was endorsed by organizations across the political spectrum. As you know, there are two House bills and a Senate bill with bipartisan support that would define full time for purposes of the ACA as 40 hours a week: the Forty Hours Is Full time Act (H.R. 2988 and S. 1188) and the Saving American Workers Act (H.R. 2575). We urge the members of this committee to support this legislation and help advance it to enactment.

Small home care agencies are an essential part of the network of services that our growing population of elderly and disabled individuals rely on. The last thing we need is an obstacle to helping them grow and create much needed jobs.

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